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TITLE 28(1-20)

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

TITLE 28

COMMERCIAL TRANSACTIONS

CHAPTER 1

UNIFORM COMMERCIAL CODE — GENERAL PROVISIONS

Part 1. General Provisions

Part 2. General Definitions and Principles of Interpretation

Part 3. Territorial Applicability and General Rules

Part 1. General Provisions

28-1-101. Short titles. — (a) This title shall be known and may be cited as the Uniform Commercial Code.

(b) This chapter may be cited as "Uniform Commercial Code — General Provisions."

History.
1967, ch. 161, § 1-101, p. 351; am. 2004, ch. 43, § 2, p. 136.

OFFICIAL COMMENT

Source: Former Section 1-101.
Changes from former law: Subsection (b) is new. It is added in order to make the structure of Article 1 parallel with that of the other articles of the Uniform Commercial Code.

1. Each other article of the Uniform Commercial Code (except Articles 10 and 11) may also be cited by its own short title. See Sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, and 9-101.

28-1-102. Scope of chapter. — This chapter applies to a transaction to the extent that it is governed by another chapter of the uniform commercial code.

History.
I.C. § 28-1-102, as added by 2004, ch. 43, § 3, p. 136.
Compiler's Notes. Former section 28-1-102, which comprised S.L. 1967, ch. 161, § 1-102, was amended and redesignated as § 28-1-103 in 2004.

OFFICIAL COMMENT

Source: New.
1. This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always been the case — the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See also Comment 1 to Section 1-301.

28-1-103. Construction of uniform commercial code to promote its purposes and policies — Applicability of supplemental principles of law. — (a) The uniform commercial code shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the uniform commercial code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

History.
1967, ch. 161, § 1-102; am. and redesig. 2004, ch. 43, § 5, p. 136.
Compiler's Notes. This section was formerly codified as § 28-1-102.
Former § 28-1-103, which comprised 1967, ch. 161, § 1-103, p. 351, was repealed by S.L. 2004, ch. 43, § 4. The contents of former § 28-1-103 can now be found in subsection (b) of this section.

Cited in: Jen-Rath Co. v. KIT Mfg. Co., 137 Idaho 330, 48 P.3d 659 (2002).

Application.

Common law mistake doctrine was not inconsistent with § 28-12-202 and could be applied to transactions governed by the statute. Posey v. Ford Motor Credit Co., 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

OFFICIAL COMMENT

Source: Former Section 1-102 (1)-(2); Former Section 1-103.

Changes from former law: This section is derived from subsections (1) and (2) of former Section 1-102 and from former Section 1-103. Subsection (a) of this section combines subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, its language is the same as subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, subsection (b) of this section is identical to former Section 1-103. The provisions have been combined in this section to reflect the interrelationship between them.

1. The Uniform Commercial Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent and infrequently-amended piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in the Uniform Commercial Code to be applied by the courts in the light of unforeseen and new circumstances and practices. The proper construction of the Uniform Commercial Code requires, of course, that its interpretation and application be limited to its reason.

Even prior to the enactment of the Uniform Commercial Code, courts were careful to keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.,* 158 Or. 1, 73 P.2d 1391 (1937), and compare Section 1-104. The courts have often recognized that the policies embodied in an act are applicable in reason to subject-matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.,* 239 U.S. 520, 36 S. Ct. 194, 60 L. Ed. 417 (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the subject-matter had been intentionally excluded from the act in general. *Agar v. Orda,* 264 N.Y. 248, 190 N.E. 479 (1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that Act was intentionally limited to goods "other than things in action.") They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.,* 156 Minn. 201, 194 N.W. 399 (1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission allowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

The Uniform Commercial Code should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Uniform Commercial Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Applicability of supplemental principles of law. Subsection (b) states the basic relationship of the Uniform Commercial Code to supplemental bodies of law. The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement its provisions in many important ways. At the same time, the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefore, while principles of common law and equity may *supplement* provisions of the Uniform Commercial Code, they may not be used to *supplant* its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the Uniform Commercial Code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

The language of subsection (b) is intended to reflect both the concept of supplementation and the concept of preemption. Some courts, however, had difficulty in applying the identical language of former Section 1-103 to determine when other law appropriately may be applied to supplement the Uniform Commercial Code, and when that law has been displaced by the Code. Some decisions applied other law in situations in which that applica-

tion, while not inconsistent with the text of any particular provision of the Uniform Commercial Code, clearly was inconsistent with the underlying purposes and policies reflected in the relevant provisions of the Code. *See, e.g., Sheerbonnet, Ltd. v. American Express Bank, Ltd.,* 951 F. Supp. 403 (S.D.N.Y. 1995). In part, this difficulty arose from Comment 1 to former Section 1-103, which stated that "this section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Act." The "explicitly displaced" language of that Comment did not accurately reflect the proper scope of Uniform Commercial Code preemption, which extends to displacement of other law that is inconsistent with the purposes and policies of the Uniform Commercial Code, as well as with its text.

3. Application of subsection (b) to statutes. The primary focus of Section 1-103 is on the relationship between the Uniform Commercial Code and principles of common law and equity as developed by the courts. State law, however, increasingly is statutory. Not only are there a growing number of state statutes addressing specific issues that come within the scope of the Uniform Commercial Code, but in some States many general principles of common law and equity have been codified. When the other law relating to a matter within the scope of the Uniform Commercial Code is a statute, the principles of subsection (b) remain relevant to the court's analysis of the relationship between that statute and the Uniform Commercial Code, but other principles of statutory interpretation that specifically address the interrelationship between statutes will be relevant as well. In some situations, the principles of subsection (b) still will be determinative. For example, the mere fact that an equitable principle is stated in statutory form rather than in judicial decisions should not change the court's analysis of whether the principle can be used to supplement the Uniform Commercial Code — under subsection (b), equitable principles may supplement provisions of the Uniform Commercial Code only if they are consistent with the purposes and policies of the Uniform Commercial Code as well as its text. In other situations, however, other interpretive principles addressing the interrelationship between statutes may lead the court to conclude that the other statute is controlling, even though it conflicts with the Uniform Commercial Code. This, for example, would be the result in a situation where the other statute was specifically intended to provide additional protection to a class of individuals engaging in transactions covered by the Uniform Commercial Code.

4. Listing not exclusive. The list of sources of supplemental law in subsection (b) is intended to be merely illustrative of the other law that may supplement the Uniform Commercial Code, and is not exclusive. No listing could be exhaustive. Further, the fact that a particular section of the Uniform Commercial Code makes express reference to other law is not intended to suggest the negation of the general application of the principles of subsection (b). Note also that the word "bankruptcy" in subsection (b), continuing the use of that word from former Section 1-103, should be understood not as a specific reference to federal bankruptcy law but, rather as a reference to general principles of insolvency, whether under federal or state law.

28-1-104. Construction against implied repeal. — The uniform commercial code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History.
1967, ch. 161, § 1-104, p. 351; am. 2004, ch. 43, § 6, p. 136.

OFFICIAL COMMENT

Source: Former Section 1-104.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-104.

1. This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention should not lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

28-1-105. Severability. — If any provision or clause of the uniform commercial code or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the uniform commercial code which can be given effect without the invalid provision or application, and to this end the provisions of the uniform commercial code are severable.

History.
1967, ch. 161, § 1-108, p. 351; am. and redesig. 2004, ch. 43, § 7, p. 136.
Compiler's Notes. This section was formerly codified as § 28-1-108.

Former § 28-1-105 has been recodified as § 28-1-301.

OFFICIAL COMMENT

Source: Former Section 1-108.
Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-108.

1. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

28-1-106. Use of singular and plural — Gender. — In the uniform commercial code, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

History.
I.C. § 28-1-106, as added by 2004, ch. 43, § 8, p. 136.

Compiler's Notes. Former § 28-1-106 has been recodified as § 28-1-305.

OFFICIAL COMMENT

Source: Former Section 1-102(5). See also 1 U.S.C. Section 1.
Changes from former law: Other than minor stylistic changes, this section is identical to former Section 1-102(5).

1. This section makes it clear that the use of singular or plural in the text of the Uniform Commercial Code is generally only a matter of drafting style — singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. *See, e.g.,* Section 9-322.

28-1-107. Section captions. — Section captions are part of the uniform commercial code.

History.
I.C. § 28-1-107, as added by 2004, ch. 43, § 9, p. 136.

Compiler's Notes. Former § 28-1-107 has been recodified as § 28-1-306.

OFFICIAL COMMENT

Source: Former Section 1-109.
Changes from former law: None.

1. Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with respect to subsection headings appearing in Article 9. See Comment 3 to Section 9-101 ("subsection headings are not a part of the official text itself and have not been approved by the sponsors.").

28-1-108. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., except that nothing in this chapter modifies, limits, or supersedes section 7001(c) of that act or authorizes electronic delivery of any of the notices described in section 7003(b) of that act.

History.
I.C. § 28-1-108, as added by 2004, ch. 43, § 10, p. 136.

Compiler's Notes. Former § 28-1-108 has been recodified as § 28-1-105.

Section 12 of S.L. 2004, ch. 43 is compiled as § 28-1-202.

OFFICIAL COMMENT

Source: New.

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.* , became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of Section 101 of that Act with respect to state law if such statute, *inter alia,* specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

2. As stated in this section, however, Article 1 does not modify, limit, or supersede Section 101(c) of the Electronic Signatures in Global and National Commerce Act (requiring affirmative consent from a consumer to electronic delivery of transactional disclosures that are required by state law to be in writing); nor does it authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

Part 2. General Definitions and Principles of Interpretation

28-1-201. General definitions. — (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of the uniform commercial code that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the uniform commercial code that apply to particular articles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing or usage of trade as provided in section 28-1-303, Idaho Code.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic docu-

ment of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2, title 28, Idaho Code, may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the uniform commercial code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
(15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.
(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
(17) "Fault" means a default, breach, or wrongful act or omission.
(18) "Fungible goods" means:
(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
(B) Goods that by agreement are treated as equivalent.
(19) "Genuine" means free of forgery or counterfeiting.
(20) "Good faith" means honesty in fact in the conduct or transaction concerned.
(21) "Holder" means:
(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
(C) The person in control of a negotiable electronic document of title.
(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
(23) "Insolvent" means:
(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
(B) Being unable to pay debts as they become due; or
(C) Being insolvent within the meaning of federal bankruptcy law.
(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more countries.
(25) "Organization" means a person other than an individual.
(26) "Party," as distinguished from "third party," means a person that has

engaged in a transaction or made an agreement subject to the uniform commercial code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Rights" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9, title 28, Idaho Code. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 28-2-401, Idaho Code, but a buyer may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. Except as otherwise provided in section 28-2-505, Idaho Code, the right of a seller or lessor of goods under chapter 2 or chapter 12, title 28, Idaho Code, to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 28-2-401, Idaho Code, is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to section 28-1-203, Idaho Code.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an

address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History.

I.C., § 28-1-201, as added by 2004, ch. 309, § 2, p. 867.

Compiler's Notes. Former § 28-1-201, which comprised 1967, ch. 161, § 1-201, p. 351; am. 1979, ch. 299, § 1, p. 781; am. 1984, ch. 88, § 1, p. 183; am. 1993, ch. 287, § 3, p. 977; am. 1993, ch. 288, § 48, p. 1019; am. 2001, ch. 208, § 4, p. 704; am. 2004, ch. 42, § 3; am. 2004, ch. 43, § 11, was repealed by S.L. 2004, ch. 309 § 1.

Organization.

Bankruptcy court held that debtors' operation of a dairy as a sole proprietorship did not fall within the definition of "organization" under this section. In re Wiersma, 283 Bankr. 294 (Bankr. D. Idaho 2002), aff'd in part, 324 Bankr. 92 (B.A.P. 9th Cir. 2005).

OFFICIAL COMMENT

Source: Former Section 1-201.

Changes from former law: In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in Article 1, as stated in former Section 1-201, but also those appearing in other Articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the "context" is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, Sections 3-103(a)(9) (defining "promise," in relevant part, as "a written undertaking to pay money signed by the person undertaking to pay") and 3-303(a)(1) (indicating that an instrument is issued or transferred for value if "the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed." It is clear from the statutory context of the use of the word "promise" in Section 3-303(a)(1) that the term was not used in the sense of its definition in Section 3-103(a)(9). Thus, the Section 3-103(a)(9) definition should not be used to give meaning to the word "promise" in Section 3-303(a).

Some definitions in former Section 1-201 have been reformulated as substantive provisions and have been moved to other sections. See Sections 1-202 (explicating concepts of notice and knowledge formerly addressed in Sections 1-201(25)-(27)), 1-204 (determining when a person gives value for rights, replacing the definition of "value" in former Section 1-201(44)), and 1-206 (addressing the meaning of presumptions, replacing the definitions of "presumption" and "presumed" in former Section 1-201(31)). Similarly, the portion of the definition of "security interest" in former Section 1-201(37) which explained the difference between a security interest and a lease has been relocated to Section 1-203.

Two definitions in former Section 1-201 have been deleted. The definition of "honor" in former Section 1-201(21) has been moved to Section 2-103(1)(b), inasmuch as the definition only applies to the use of the word in Article 2. The definition of "telegram" in former Section 1-201(41) has been deleted because that word no longer appears in the definition of "conspicuous."

Other than minor stylistic changes and renumbering, the remaining definitions in this section are as in former Article 1 except as noted below.

1. "Action." Unchanged from former Section 1-201, which was derived from similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 58, Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act.

2. "Aggrieved party." Unchanged from former Section 1-201.

3. "Agreement." Derived from former Section 1-201. As used in the Uniform Commercial Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Uniform Commercial Code to displace a stated rule of law. Whether an agreement has legal consequences is determined by applicable provisions of the Uniform Commercial Code and, to the extent provided in Section 1-103, by the law of contracts.

4. "Bank." Derived from Section 4A-104.

5. "Bearer." Unchanged, except in one respect, from former Section 1-201, which was derived from Section 191, Uniform Negotiable Instruments Law. The term bearer applies to negotiable documents of title and has been broadened to include a person in control of an electronic negotiable document of title. Control of an electronic document of title is defined in Article 7 (Section 7-106).

6. "Bill of Lading." Derived from former Section 1-201. The reference to, and definition of, an "airbill" has been deleted as no longer necessary. A bill of lading is one type of document of title as defined in subsection (16). This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-102).

7. "Branch." Unchanged from former Section 1-201.

8. "Burden of establishing a fact." Unchanged from former Section 1-201.

9. "Buyer in ordinary course of business." Except for minor stylistic changes, identical to former Section 1-201 (as amended in conjunction with the 1999 revisions to Article 9). The major significance of the phrase lies in Section 2-403 and in the Article on Secured Transactions (Article 9).

The first sentence of paragraph (9) makes clear that a buyer from a pawnbroker cannot be a buyer in ordinary course of business. The second sentence explains what it means to buy "in the ordinary course." The penultimate sentence prevents a buyer that does not have the right to possession as against the seller from being a buyer in ordinary course of business. Concerning when a buyer obtains possessory rights, see Sections 2-502 and 2-716. However, the penultimate sentence is not intended to affect a buyer's status as a buyer in ordinary course of business in cases (such as a "drop shipment") involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether *as against the seller* the buyer or one taking through the buyer has possessory rights.

10. "Conspicuous." Derived from former Section 1-201(10). This definition states the general standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.

11. "Consumer." Derived from Section 9-102(a)(25).

12. "Contract." Except for minor stylistic changes, identical to former Section 1-201.

13. "Creditor." Unchanged from former Section 1-201.

14. "Defendant." Except for minor stylistic changes, identical to former Section 1-201, which was derived from Section 76, Uniform Sales Act.

15. "Delivery." Derived from former Section 1-201. The reference to certificated securities has been deleted in light of the more specific treatment of the matter in Section 8-301. The definition has been revised to accommodate electronic documents of title. Control of an electronic document of title is defined in Article 7 (Section 7-106).

16. "Document of title." Derived from former Section 1-201, which was derived from Section 76, Uniform Sales Act. This definition makes explicit that the obligation or designation of a third party as "bailee" is essential to a document of title clearly rejects any such result as obtained in *Hixson v. Ward,* 254 Ill. App. 505 (1929), which treated a conditional

sales contract as a document of title. Also the definition is left open so that new types of documents may be included, including documents which gain commercial recognition in the international arena. See UNCITRAL Draft Instrument on the Carriage of Goods By Sea. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by shipping companies upon delivery of the goods at the dock, entitling a designated person to be issued a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this section regardless of the name given to the instrument.

The goods must be "described," but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article. The definition is broad enough to include an airway bill.

A document of title may be either tangible or electronic. Tangible documents of title should be construed to mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic documents of title is defined in Article 7 (Section 7-106).

17. "Fault." Derived from former Section 1-201. "Default" has been added to the list of events constituting fault.

18. "Fungible goods." Derived from former Section 1-201. References to securities have been deleted because Article 8 no longer uses the term "fungible" to describe securities. Accordingly, this provision now defines the concept only in the context of goods.

19. "Genuine." Unchanged from former Section 1-201.

20. "Good faith." Former Section 1-201(19) defined "good faith" simply as honesty in fact; the definition contained no element of commercial reasonableness. Initially, that definition applied throughout the Code with only one exception. Former Section 2-103(1)(b) provided that "*in this Article* . . . good faith in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." This alternative definition was limited in applicability in three ways. First, it applied only to transactions within the scope of Article 2. Second, it applied only to merchants. Third, strictly construed it applied only to uses of the phrase "good faith" *in Article 2*; thus, so construed it would not define "good faith" for its most important use — the obligation of good faith imposed by former Section 1-203.

Over time, however, amendments to the Uniform Commercial Code brought the Article 2 merchant concept of good faith (subjective honesty and objective commercial reasonableness) into other Articles. First, Article 2A explicitly incorporated the Article 2 standard. See Section 2A-103(7). Then, other Articles broadened the applicability of that standard by adopting it for all parties rather than just for merchants. *See, e.g.,* Sections 3-103(a)(4), 4A-105(a)(6), 8-102(a)(10), and 9-102(a)(43). All of these definitions are comprised of two elements — honesty in fact *and* the observance of reasonable commercial standards of fair dealing. Only revised Article 5 defines "good faith" solely in terms of subjective honesty, and only Article 6 and Article 7 are without definitions of good faith. (It should be noted that, while revised Article 6 did not define good faith, Comment 2 to revised Section 6-102 states that "this Article adopts the definition of 'good faith' in Article 1 in all cases, even when the buyer is a merchant.") Given these developments, it is appropriate to move the broader definition of "good faith" to Article 1. Of course, this definition is subject to the applicability of the narrower definition in revised Article 5.

21. "Holder." Derived from former Section 1-201. The definition has been reorganized for clarity and amended to provide for electronic negotiable documents of title.

22. "Insolvency proceedings." Unchanged from former Section 1-201.

23. "Insolvent." Derived from former Section 1-201. The three tests of insolvency — "generally ceased to pay debts in the ordinary

course of business other than as a result of a bona fide dispute as to them," "unable to pay debts as they become due," and "insolvent within the meaning of the federal bankruptcy law" — are expressly set up as alternative tests and must be approached from a commercial standpoint.

24. "Money." Substantively identical to former Section 1-201. The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

25. "Organization." The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

26. "Party." Substantively identical to former Section 1-201. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to the principal, particular account is taken of that situation.

27. "Person." The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

28. "Present value." This definition was formerly contained within the definition of "security interest" in former Section 1-201(37).

29. "Purchase." Derived from former Section 1-201. The form of definition has been changed from "includes" to "means."

30. "Purchaser." Unchanged from former Section 1-201.

31. "Record." Derived from Section 9-102(a)(69).

32. "Remedy." Unchanged from former Section 1-201. The purpose is to make it clear that both remedy and right (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under the Uniform Commercial Code, remedial rights being those to which an aggrieved party may resort on its own.

33. "Representative." Derived from former Section 1-201. Reorganized, and form changed from "includes" to "means."

34. "Right." Except for minor stylistic changes, identical to former Section 1-201.

35. "Security Interest." The definition is the first paragraph of the definition of "security interest" in former Section 1-201, with minor stylistic changes. The remaining portion of that definition has been moved to Section 1-203. Note that, because of the scope of Article 9, the term includes the interest of certain outright buyers of certain kinds of property.

36. "Send." Derived from former Section 1-201. Compare "notifies".

37. "Signed." Derived from former Section 1-201. Former Section 1-201 referred to "intention to authenticate"; because other articles now use the term "authenticate," the language has been changed to "intention to adopt or accept." The latter formulation is derived from the definition of "authenticate" in Section 9-102(a)(7). This provision refers only to writings, because the term "signed," as used in some articles, refers only to writings. This provision also makes it clear that, as the term "signed" is used in the Uniform Commercial Code, a complete signature is not necessary. The symbol may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible situations can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to adopt or accept the writing.

38. "State." This is the standard definition of the term used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

39. "Surety." This definition makes it clear that "surety" includes all secondary obligors, not just those whose obligation refers to the person obligated as a surety. As to the nature of secondary obligations generally, see Restatement (Third), Suretyship and Guaranty Section 1 (1996).

40. "Term." Unchanged from former Section 1-201.

41. "Unauthorized signature." Unchanged from former Section 1-201.

42. "Warehouse receipt." Derived from former Section 1-201, which was derived from Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons. The definition makes clear that the receipt must qualify as a document of title under subsection (16).

43. "Written" or "writing." Unchanged from former Section 1-201.

28-1-202. Notice — Knowledge. — (a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

History.
I.C. § 28-1-202, as added by 2004, ch. 43, § 12, p. 136.

Compiler's Notes. Former § 28-1-202 has been recodified as § 28-1-307.

OFFICIAL COMMENT

Source: Derived from former Section 1-201(25)-(27).

Changes from former law: These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from Section 1-201 to this section. The reference to the "forgotten notice" doctrine has been deleted.

1. Under subsection (a), a person has notice of a fact when, *inter alia*, the person has received a notification of the fact in question.

2. As provided in subsection (d), the word "notifies" is used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "Send." When the essential fact is the other party's receipt of the notice, that is stated. Subsection (e) states when a notification is received.

3. Subsection (f) makes clear that notice, knowledge, or a notification, although "received," for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

28-1-203. Lease distinguished from security interest. — (a) Whether a transaction in the form of a lease creates a lease or security

interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

History.

I.C. § 28-1-203, as added by 2004, ch. 43, § 13, p. 136.

Compiler's Notes. Former § 28-1-203 has been recodified as § 28-1-304.

Sale.

Where a bankruptcy debtor purported to lease restaurant equipment under a lease which provided that the debtor had an option to purchase the equipment for a nominal price after paying the monthly payments for the full lease term, and the putative lessor filed a financing statement to protect its security interest in the equipment, the transaction was a sale rather than a lease. Bankr. Estate of Wing Foods, Inc. v. CCF Leasing Co. (In re Wing Foods), 2010 Bankr. LEXIS 114 (Bankr. D. Idaho Jan. 14, 2010).

OFFICIAL COMMENT

Source: Former Section 1-201(37).

Changes from former law: This section is substantively identical to those portions of former Section 1-201(37) that distinguished "true" leases from security interests, except that the definition of "present value" formerly embedded in Section 1-201(37) has been placed in Section 1-201(28).

1. An interest in personal property or fixtures which secures payment or performance of an obligation is a "security interest." See Section 1-201(37). Security interests are sometimes created by transactions in the form of leases. Because it can be difficult to distinguish leases that create security interests from those that do not, this section provides rules that govern the determination of whether a transaction in the form of a lease creates a security interest.

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: what is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in the 1978 Official Text of the Act, Section 1-201(37). The confusion was compounded by the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee's interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to the lessor. This has significant implications to the lessee's creditors. "On common law theory, the lessor, since he has not parted with title, is entitled to full protection against the lessee's creditors and trustee in bankruptcy ...." 1 G. Gilmore, *Security Interests in Personal Property* Section 3.6, at 76 (1965).

Under pre-UCC chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured Transactions (Article 9) did not change the common law in that respect. Coogan, Leasing and the Uniform Commercial Code, in *Equipment Leasing — Leveraged Leasing* 681, 700 n.25, 729 n.80 (2d ed. 1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest in Section 1-201(37) of the 1978 Official Text of the Act provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, *i.e.*, leases intended as security; however, the definition became vague and outmoded.

Lease is defined in Article 2A as a transfer of the right to possession and use of goods for a term, in return for consideration. Section 2A-103(1)(j). The definition continues by stating that the retention or creation of a security interest is not a lease. Thus, the task of sharpening the line between true leases and security interests disguised as leases continues to be a function of this Article.

This section begins where Section 1-201(35) leaves off. It draws a sharper line between leases and security interests disguised as leases to create greater certainty in commercial transactions.

Prior to enactment of the rules now codified in this section, the 1978 Official Text of Section 1-201(37) provided that whether a lease was intended as security (*i.e.*, a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

Reference to the intent of the parties to create a lease or security interest led to unfortunate results. In discovering intent, courts relied upon factors that were thought to be more consistent with sales or loans than leases. Most of these criteria, however, were as applicable to true leases as to security interests. Examples include the typical net

lease provisions, a purported lessor's lack of storage facilities or its character as a financing party rather than a dealer in goods. Accordingly, this section contains no reference to the parties' intent.

Subsections (a) and (b) were originally taken from Section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. Gilmore, *Security Law, Formalism and Article 9,* 47 Neb. L. Rev. 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus correcting early statutory gloss, *e.g., In re Royer's Bakery, Inc.*, 1 U.C.C. Rep. Serv. (Callaghan) 342 (Bankr. E.D. Pa. 1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 Bankr. 647, 651-52 (Bankr. W.D. Wis. 1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this section. *In re Celeryvale Transp.*, 44 Bankr. 1007, 1014-15 (Bankr. E.D. Tenn. 1984). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 Bankr. 370, 371-73 (Bankr. W.D. Wis. 1983).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not *per se* create a security interest. *Rushton v. Shea*, 419 F. Supp. 1349, 1365 (D. Del. 1976). Subparagraphs (2) and (3) provide the same regarding the provisions of the typical net lease. *Compare All-States Leasing Co. v. Ochs*, 42 Or. App. 319, 600 P.2d 899 (Ct. App. 1979), *with In re Tillery*, 571 F.2d 1361 (5th Cir. 1978). Subparagraph (4) restates and expands the provisions of the 1978 Official Text of Section 1-201(37) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. *Compare Arnold Mach. Co. v. Balls*, 624 P.2d 678 (Utah 1981), *with Aoki v. Shepherd Mach. Co.*, 665 F.2d 941 (9th Cir. 1982).

The relationship of subsection (b) to subsection (c) deserves to be explored. The fixed price purchase option provides a useful example. A fixed price purchase option in a lease does not of itself create a security interest. This is particularly true if the fixed price is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. A security interest is created only if the option price is nominal and the conditions stated in the introduction to the second paragraph of this subsection are met. There is a set of purchase options whose fixed price is less than fair market value but greater than nominal that must be determined on the facts of each case to ascertain whether the transaction in which the option is included creates a lease or a security interest.

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 F.2d 1139 (7th Cir. 1982). This was not done because it would unnecessarily complicate the definition. Further development of this rule is left to the courts.

Subsections (d) and (e) provide definitions and rules of construction.

28-1-204. Value. — Except as otherwise provided in chapters 3, 4, 5 and 6, title 28, Idaho Code, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

History.

I.C. § 28-1-204, as added by 2004, ch. 43, § 14, p. 136.

Compiler's Notes. Former § 28-1-204 has been recodified as § 28-1-205.

Chapter 6 of title 28, Idaho Code, referred to in the introductory paragraph, was repealed by S.L. 1993, ch. 288, § 46, effective July 1, 1993.

Cited in: Jen-Rath Co. v. KIT Mfg. Co., 137 Idaho 330, 48 P.3d 659 (2002).

OFFICIAL COMMENT

Source: Former Section 1-201(44).

Changes from former law: Unchanged from former Section 1-201, which was derived from Sections 25, 26, 27, 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 53, Uniform Bills of Lading Act; Section 58, Uniform Warehouse Receipts Act; Section 22(1), Uniform Stock Transfer Act; Section 1, Uniform Trust Receipts Act. These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from former Section 1-201 to this section.

1. All the Uniform Acts in the commercial law field (except the Uniform Conditional Sales Act) have carried definitions of "value." All those definitions provided that value was any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a preexisting claim. Subsections (1), (2), and (4) in substance continue the definitions of "value" in the earlier acts. Subsection (3) makes explicit that "value" is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingent into a fixed obligation.

This definition is not applicable to Articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. See Sections 4-208, 4-209, 3-303. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

28-1-205. Reasonable time — Seasonableness. — (a) Whether a time for taking an action required by the uniform commercial code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

History.

1967, ch. 161, § 1-204, p. 351; am. and redesig. 2004, ch. 43, § 15, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-204.

Former § 28-1-205 has been recodified as § 28-1-303.

Cited in: Jen-Rath Co. v. KIT Mfg. Co., 137 Idaho 330, 48 P.3d 659 (2002).

ANALYSIS

Rejection in reasonable time.
Test of reasonability.

Rejection in Reasonable Time.

Athletic club owners' rejection of a dehumidifier occurred within a reasonable time after delivery because they needed to operate the dehumidifier in the athletic club to determine whether it conformed to the express warranty that it was fit for that particular purpose, and their continued use of the dehumidifier was necessary to mitigate damages and was not an act inconsistent with the corporation's ownership. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

Test of Reasonability.

After a buyer and seller entered into a

contract for the sale of logs for the construction of a log cabin, and the contract failed to set forth a delivery date, the buyer waited for delivery of a complete log cabin package for over a year after paying the seller 70 percent of the contract price. The buyer then arranged to purchase the balance of logs needed to complete her cabin from another supplier, and the seller was found to have breached the contract by failing to deliver the logs within a reasonable time. Borah v. McCandless, 147 Idaho 73, 205 P.3d 1209 (2009).

OFFICIAL COMMENT

Source: Former Section 1-204(2)-(3).

Changes from former law: This section is derived from subsections (2) and (3) of former Section 1-204. Subsection (1) of that section is now incorporated in Section 1-302(b).

1. Subsection (a) makes it clear that requirements that actions be taken within a "reasonable" time are to be applied in the transactional context of the particular action.

2. Under subsection (b), the agreement that fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of "agreement" (Section 1-201) the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

28-1-206. Presumptions. — Whenever the uniform commercial code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

History.

I.C., § 28-1-206, as added by 2004, ch. 43, § 17, p. 136.

Compiler's Notes. Former § 28-1-206, which comprised 1967, ch. 161, § 1-206, p. 351; am. 1995, ch. 272, § 17, p. 873, was repealed by S.L. 2004, ch. 43, § 16.

OFFICIAL COMMENT

Source: Former Section 1-201(31).

Changes from former law. None, other than stylistic changes.

1. Several sections of the Uniform Commercial Code state that there is a "presumption" as to a certain fact, or that the fact is "presumed." This section, derived from the definition appearing in former Section 1-201(31), indicates the effect of those provisions on the proof process.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

28-1-301. Territorial application of the uniform commercial code — Parties' power to choose applicable law. — (a) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement the uniform commercial code applies to transactions bearing an appropriate relation to this state.

(b) Where one (1) of the following provisions of the uniform commercial code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

Rights of creditors against sold goods. Section 28-2-402, Idaho Code.

Applicability of the chapter on leases. Sections 28-12-105 and 28-12-106, Idaho Code.

Applicability of the chapter on bank deposits and collections. Section 28-4-102, Idaho Code.

Governing law in the part on funds transfers. Section 28-4-638, Idaho Code.

Letters of credit. Section 28-5-116, Idaho Code.

Applicability of the chapter on investment securities. Section 28-8-110, Idaho Code.

Law governing perfection, the effect of perfection or nonperfection, the priority of security interests and agricultural liens. Sections 28-9-301 through 28-9-307, Idaho Code.

History.

1967, ch. 161, § 1-105, p. 351; am. 1991, ch. 135, § 2, p. 295; am. 1993, ch. 287, § 2, p. 977; am. 1993, ch. 288, § 47, p. 1019; am. 1995, ch. 272, § 16, p. 873; am. 1996, ch. 7, § 3, p. 9; am. 2001, ch. 208, § 3, p. 704; am. and redesig. 2004, ch. 43, § 19, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-105.

OFFICIAL COMMENT

Source: Former Section 1-105.

Summary of changes from former law: Section 1-301, which replaces former Section 1-105, represents a significant rethinking of choice of law issues addressed in that section. The new section reexamines both the power of parties to select the jurisdiction whose law will govern their transaction and the determination of the governing law in the absence of such selection by the parties. With respect to the power to select governing law, the draft affords greater party autonomy than former Section 1-105, but with important safeguards protecting consumer interests and fundamental policies.

Section 1-301 addresses contractual designation of governing law somewhat differently than does former Section 1-105. Former law allowed the parties to any transaction to designate a jurisdiction whose law governs if the transaction bears a "reasonable relation" to that jurisdiction. Section 1-301 deviates from this approach by providing different rules for transactions involving a consumer than for non-consumer transactions, such as "business to business" transactions.

In the context of consumer transactions, the language of Section 1-301, unlike that of former Section 1-105, protects consumers against the possibility of losing the protection of consumer protection rules applicable to the aspects of the transaction governed by the Uniform Commercial Code. In most situations, the relevant consumer protection rules will be those of the consumer's home jurisdiction. A special rule, however, is provided for certain face-to-face sales transactions. (See Comment 3).

In the context of business-to-business transactions, Section 1-301 generally provides the parties with greater autonomy to designate a jurisdiction whose law will govern than did former Section 1-105, but also provides safeguards against abuse that did not appear in former Section 1-105. In the non-consumer context, following emerging international norms, greater autonomy is provided in subsections (c)(1) and (c)(2) by deleting the former requirement that the transaction bear a "reasonable relation" to the jurisdiction. In the case of wholly domestic transactions, however, the jurisdiction designated must be a State. (See Comment 4).

An important safeguard not present in former Section 1-105 is found in subsection (f). Subsection (f) provides that the designation of a jurisdiction's law is not effective (even if the transaction bears a reasonable relation to that jurisdiction) to the extent that application of that law would be contrary to a fundamental policy of the jurisdiction whose law would govern in the absence of contractual designation. Application of the law designated may be contrary to a fundamental policy of the State or country whose law would otherwise govern either because of the nature of the law designated or because of the "mandatory" nature of the law that would otherwise apply. (See Comment 6).

In the absence of an effective contractual designation of governing law, former Section 1-105(1) directed the forum to apply its own law if the transaction bore "an appropriate relation to this state." This direction, however, was frequently ignored by courts. Section 1-301(d) provides that, in the absence of an effective contractual designation, the forum should apply the forum's general choice of law principles, subject to certain special rules in consumer transactions. (See Comments 3 and 7).

1. *Applicability of section.* This section is neither a complete restatement of choice of

law principles nor a free-standing choice of law statute. Rather, it is a provision of Article 1 of the Uniform Commercial Code. As such, the scope of its application is limited in two significant ways.

First, this section is subject to Section 1-102, which states the scope of Article 1. As that section indicates, Article 1, and the rules contained therein, apply to transactions to the extent that they are governed by one of the other Articles of the Uniform Commercial Code. Thus, this section does not apply to matters outside the scope of the Uniform Commercial Code, such as a services contract, a credit card agreement, or a contract for the sale of real estate. This limitation was implicit in former Section 1-105, and is made explicit in Section 1-301(b).

Second, subsection (g) provides that this section is subject to the specific choice of law provisions contained in other Articles of the Uniform Commercial Code. Thus, to the extent that a transaction otherwise within the scope of this section also is within the scope of one of those provisions, the rules of that specific provision, rather than of this section, apply.

The following cases illustrate these two limitations on the scope of Section 1-301:

Example 1: A, a resident of Indiana, enters into an agreement with Credit Card Company, a Delaware corporation with its chief executive office located in New York, pursuant to which A agrees to pay Credit Card Company for purchases charged to A's credit card. The agreement contains a provision stating that it is governed by the law of South Dakota. The choice of law rules in Section 1-301 do not apply to this agreement because the agreement is not governed by any of the other Articles of the Uniform Commercial Code.

Example 2: A, a resident of Indiana, maintains a checking account with Bank B, an Ohio banking corporation located in Ohio. At the time that the account was established, Bank B and A entered into a "Bank-Customer Agreement" governing their relationship with respect to the account. The Bank-Customer Agreement contains some provisions that purport to limit the liability of Bank B with respect to its decisions whether to honor or dishonor checks purporting to be drawn on A's account. The Bank-Customer Agreement also contains a provision stating that it is governed by the law of Ohio. The provisions purporting to limit the liability of Bank B deal with issues governed by Article 4. Therefore, determination of the law applicable to those issues (including determination of the effectiveness of the choice of law clause as it applies to those issues) is within the scope of Section 1-301 as provided in subsection (b). Nonetheless, the rules of Section 1-301 would not apply to that determination because of subsection (g), which states that the choice of law rules in Section 4-102 govern instead.

2. *Contractual choice of law.* This section allows parties broad autonomy, subject to several important limitations, to select the law governing their transaction, even if the transaction does not bear a relation to the State or country whose law is selected. This recognition of party autonomy with respect to governing law has already been established in several Articles of the Uniform Commercial Code (see Sections 4A-507, 5-116, and 8-110) and is consistent with international norms. *See, e.g.,* Inter-American Convention on the Law Applicable to International Contracts, Article 7 (Mexico City 1994); Convention on the Law Applicable to Contracts for the International Sale of Goods, Article 7(1) (The Hague 1986); EC Convention on the Law Applicable to Contractual Obligations, Article 3(1) (Rome 1980).

There are three important limitations on this party autonomy to select governing law. First, a different, and more protective, rule applies in the context of consumer transactions. (See Comment 3). Second, in an entirely domestic transaction, this section does not validate the selection of foreign law. (See Comment 4.) Third, contractual choice of law will not be given effect to the extent that application of the law designated would be contrary to a fundamental policy of the State or country whose law would be applied in the absence of such contractual designation. (See Comment 6).

This Section does not address the ability of parties to designate non-legal codes such as trade codes as the set of rules governing their transaction. The power of parties to make such a designation as part of their agreement is found in the principles of Section 1-302. That Section, allowing parties broad freedom of contract to structure their relations, is adequate for this purpose. This is also the case with respect to the ability of the parties to designate recognized bodies of rules or principles applicable to commercial transactions that are promulgated by intergovernmental organizations such as UNCITRAL or Unidroit. See, e.g., Unidroit Principles of International Commercial Contracts.

3. *Consumer transactions.* If one of the parties is a consumer (as defined in Section 1-201(b)(11)), subsection (e) provides the parties less autonomy to designate the State or country whose law will govern.

First, in the case of a consumer transaction, subsection (e)(1) provides that the transaction must bear a reasonable relation to the State

or country designated. Thus, the rules of subsection (c) allowing the parties to choose the law of a jurisdiction to which the transaction bears no relation do not apply to consumer transactions.

Second, subsection (e)(2) provides that application of the law of the State or country determined by the rules of this section (whether or not that State or country was designated by the parties) cannot deprive the consumer of the protection of rules of law which govern matters within the scope of Section 1-301, are protective of consumers, and are not variable by agreement. The phrase "rule of law" is intended to refer to case law as well as statutes and administrative regulations. The requirement that the rule of law be one "governing a matter within the scope of this section" means that, consistent with the scope of Section 1-301, which governs choice of law only with regard to the aspects of a transaction governed by the Uniform Commercial Code, the relevant consumer rules are those that govern those aspects of the transaction. Such rules may be found in the Uniform Commercial Code itself, as are the consumer-protective rules in Part 6 of Article 9, or in other law if that other law governs the UCC aspects of the transaction. See, for example, the rule in Section 2.403 of the Uniform Consumer Credit Code which prohibits certain sellers and lessors from taking negotiable instruments other than checks and provides that a holder is not in good faith if the holder takes a negotiable instrument with notice that it is issued in violation of that section.

With one exception (explained in the next paragraph), the rules of law the protection of which the consumer may not be deprived are those of the jurisdiction in which the consumer principally resides. The jurisdiction in which the consumer principally resides is determined at the time relevant to the particular issue involved. Thus, for example, if the issue is one related to formation of a contract, the relevant consumer protective rules are rules of the jurisdiction in which the consumer principally resided at the time the facts relevant to contract formation occurred, even if the consumer no longer principally resides in that jurisdiction at the time the dispute arises or is litigated. If, on the other hand, the issue is one relating to enforcement of obligations, then the relevant consumer protective rules are those of the jurisdiction in which the consumer principally resides at the time enforcement is sought, even if the consumer did not principally reside in that jurisdiction at the time the transaction was entered into.

In the case of a sale of goods to a consumer, in which the consumer both makes the contract and takes possession of the goods in the same jurisdiction and that jurisdiction is not the consumer's principal residence, the rule in subsection (e)(2)(B) applies. In that situation, the relevant consumer protective rules, the protection of which the consumer may not be deprived by the choice of law rules of subsections (c) and (d), are those of the State or country in which both the contract is made and the consumer takes delivery of the goods. This rule, adapted from Section 2A-106 and Article 5 of the EC Convention on the Law Applicable to Contractual Obligations, enables a seller of goods engaging in face-to-face transactions to ascertain the consumer protection rules to which those sales are subject, without the necessity of determining the principal residence of each buyer. The reference in subsection (e)(2)(B) to the State or country in which the consumer makes the contract should not be read to incorporate formalistic concepts of where the last event necessary to conclude the contract took place; rather, the intent is to identify the state in which all material steps necessary to enter into the contract were taken by the consumer.

The following examples illustrate the application of Section 1-301(e)(2) in the context of a contractual choice of law provision:

Example 3: Seller, located in State A, agrees to sell goods to Consumer, whose principal residence is in State B. The parties agree that the law of State A would govern this transaction. Seller ships the goods to Consumer in State B. An issue related to contract formation subsequently arises. Under the law of State A, that issue is governed by State A's uniform version of Article 2. Under the law of State B, that issue is governed by a non-uniform rule, protective of consumers and not variable by agreement, that brings about a different result than would occur under the uniform version of Article 2. Under Section 1-301(e)(2)(A), the parties' agreement that the law of State A would govern their transaction cannot deprive Consumer of the protection of State B's consumer protective rule. This is the case whether State B's rule is codified in Article 2 of its Uniform Commercial Code or is found elsewhere in the law of State B.

Example 4: Same facts as Example 3, except that (i) Consumer takes all material steps necessary to enter into the agreement to purchase the goods from Seller, and takes delivery of those goods, while on vacation in State A and (ii) the parties agree that the law of State C (in which Seller's chief executive office is located) would govern their transaction. Under subsections (c)(1) and (e)(1), the designation of the law of State C as governing will be effective so long as the

transaction is found to bear a reasonable relation to State C (assuming that the relevant law of State C is not contrary to a fundamental policy of the State whose law would govern in the absence of agreement), but that designation cannot deprive Consumer of the protection of any rule of State A that is within the scope of this section and is both protective of consumers and not variable by agreement. State B's consumer protective rule is not relevant because, under Section 1-301(e)(2)(B), the relevant consumer protective rules are those of the jurisdiction in which the consumer both made the contract and took delivery of the goods — here, State A — rather than those of the jurisdiction in which the consumer principally resides.

It is important to note that subsection (e)(2) applies to all determinations of applicable law in transactions in which one party is a consumer, whether that determination is made under subsection (c) (in cases in which the parties have designated the governing law in their agreement) or subsection (d) (in cases in which the parties have not made such a designation). In the latter situation, application of the otherwise-applicable conflict of laws principles of the forum might lead to application of the laws of a State or country other than that of the consumer's principal residence. In such a case, however, subsection (e)(2) applies to preserve the applicability of consumer protection rules for the benefit of the consumer as described above.

4. *Wholly domestic transactions.* While this Section provides parties broad autonomy to select governing law, that autonomy is limited in the case of wholly domestic transactions. In a "domestic transaction," subsection (c)(1) validates only the designation of the law of a State. A "domestic transaction" is a transaction that does not bear a reasonable relation to a country other than the United States. (See subsection (a)). Thus, in a wholly domestic non-consumer transaction, parties may (subject to the limitations set out in subsections (f) and (g)) designate the law of any State but not the law of a foreign country.

5. *International transactions.* This section provides greater autonomy in the context of international transactions. As defined in subsection (a)(2), a transaction is an "international transaction" if it bears a reasonable relation to a country other than the United States. In a non-consumer international transaction, subsection (c)(2) provides that a designation of the law of any State or country is effective (subject, of course, to the limitations set out in subsections (f) and (g)). It is important to note that the transaction need not bear a relation to the State or country designated if the transaction is international. Thus, for example, in a non-consumer lease of goods in which the lessor is located in Mexico and the lessee is located in Louisiana, a designation of the law of Ireland to govern the transaction would be given effect under this section even though the transaction bears no relation to Ireland. The ability to designate the law of any country in non-consumer international transactions is important in light of the common practice in many commercial contexts of designating the law of a "neutral" jurisdiction or of a jurisdiction whose law is well-developed. If a country has two or more territorial units in which different systems of law relating to matters within the scope of this section are applicable (as is the case, for example, in Canada and the United Kingdom), subsection (c)(2) should be applied to designation by the parties of the law of one of those territorial units. Thus, for example, subsection (c)(2) should be applied if the parties to a non-consumer international transaction designate the laws of Ontario or Scotland as governing their transaction.

6. *Fundamental policy.* Subsection (f) provides that an agreement designating the governing law will not be given effect to the extent that application of the designated law would be contrary to a fundamental policy of the State or country whose law would otherwise govern. This rule provides a narrow exception to the broad autonomy afforded to parties in subsection (c). One of the prime objectives of contract law is to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract. In this way, certainty and predictability of result are most likely to be secured. See Restatement (Second) Conflict of Laws, Section 187, Comment *e*.

Under the fundamental policy doctrine, a court should not refrain from applying the designated law merely because application of that law would lead to a result different than would be obtained under the local law of the State or country whose law would otherwise govern. Rather, the difference must be contrary to a public policy of that jurisdiction that is so substantial that it justifies overriding the concerns for certainty and predictability underlying modern commercial law as well as concerns for judicial economy generally. Thus, application of the designated law will rarely be found to be contrary to a fundamental policy of the State or country whose law would otherwise govern when the difference between the two concerns a requirement, such as a statute of frauds, that relates to formalities, or general rules of contract law, such as those concerned with the need for consideration.

The opinion of Judge Cardozo in *Loucks v. Standard Oil Co. of New York*, 120 N.E. 198

(1918), regarding the related issue of when a state court may decline to apply the law of another state, is a helpful touchstone here:

> Our own scheme of legislation may be different. We may even have no legislation on the subject. That is not enough to show that public policy forbids us to enforce the foreign right. A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home. Similarity of legislation has indeed this importance; its presence shows beyond question that the foreign statute does not offend the local policy. But its absence does not prove the contrary. It is not to be exalted into an indispensable condition. The misleading word "comity" has been responsible for much of the trouble. It has been fertile in suggesting a discretion unregulated by general principles.
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> ***
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> The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.

120 N.E. at 201-02 (citations to authorities omitted).

Application of the designated law may be contrary to a fundamental policy of the State or country whose law would otherwise govern either (i) because the substance of the designated law violates a fundamental principle of justice of that State or country or (ii) because it differs from a rule of that State or country that is "mandatory" in that it *must* be applied in the courts of that State or country without regard to otherwise-applicable choice of law rules of that State or country and without regard to whether the designated law is otherwise offensive. The mandatory rules concept appears in international conventions in this field, *e.g.*, EC Convention on the Law Applicable to Contractual Obligations, although in some cases the concept is applied to authorize the *forum* state to apply *its* mandatory rules, rather than those of the State or country whose law would otherwise govern. The latter situation is not addressed by this section. (See Comment 9).

It is obvious that a rule that is freely changeable by agreement of the parties under the law of the State or country whose law would otherwise govern cannot be construed as a mandatory rule of that State or country. This does not mean, however, that rules that cannot be changed by agreement under that law are, for that reason alone, mandatory rules. Otherwise, contractual choice of law in the context of the Uniform Commercial Code would be illusory and redundant; the parties would be able to accomplish by choice of law no more than can be accomplished under Section 1-302, which allows variation of otherwise applicable rules by agreement. (Under Section 1-302, the parties could agree to vary the rules that would otherwise govern their transaction by substituting for those rules the rules that would apply if the transaction were governed by the law of the designated State or country without designation of governing law.) Indeed, other than cases in which a mandatory choice of law rule is established by statute (see, *e.g.*, Sections 9-301 through 9-307, explicitly preserved in subsection (g)), cases in which courts have declined to follow the designated law solely because a rule of the State or country whose law would otherwise govern is mandatory are rare.

7. *Choice of law in the absence of contractual designation.* Subsection (d), which replaces the second sentence of former Section 1-105(1), determines which jurisdiction's law governs a transaction in the absence of an effective contractual choice by the parties. Former Section 1-105(1) provided that the law of the forum (*i.e.*, the Uniform Commercial Code) applied if the transaction bore "an appropriate relation to this state." By using an "appropriate relation" test, rather than, for example, a "most significant relationship" test, Section 1-105(1) expressed a bias in favor of applying the forum's law. This bias, while not universally respected by the courts, was justifiable in light of the uncertainty that existed at the time of drafting as to whether the Uniform Commercial Code would be adopted by all the states; the pro-forum bias would assure that the Uniform Commercial Code would be applied so long as the transaction bore an "appropriate" relation to the forum. Inasmuch as the Uniform Commercial Code has been adopted, at least in part, in all U.S. jurisdictions, the vitality of this point is minimal in the domestic context, and international comity concerns militate against continuing the pro-forum, pro-UCC bias in transnational transactions. Whether the choice is between the law of two jurisdictions that have adopted the Uniform Commercial Code, but whose law differs (because of differences in enacted language or differing judicial interpretations), or between the Uniform Commercial Code and the law of another country, there is no strong justification for directing a court to apply different choice of law principles to that determination than it would apply if the matter were not governed by the

Uniform Commercial Code. Similarly, given the variety of choice of law principles applied by the states, it would not be prudent to designate only one such principle as the proper one for transactions governed by the Uniform Commercial Code. Accordingly, in cases in which the parties have not made an effective choice of law, Section 1-301(d) simply directs the forum to apply its ordinary choice of law principles to determine which jurisdiction's law governs, subject to the special rules of Section 1-301(e)(2) with regard to consumer transactions.

8. *Primacy of other Uniform Commercial Code choice of law rules.* Subsection (g), which is essentially identical to former Section 1-105(2), indicates that choice of law rules provided in the other Articles govern when applicable.

9. *Matters not addressed by this section.* As noted in Comment 1, this section is not a complete statement of conflict of laws doctrines applicable in commercial cases. Among the issues this section does not address, and leaves to other law, three in particular deserve mention. First, a forum will occasionally decline to apply the law of a different jurisdiction selected by the parties when application of that law would be contrary to a fundamental policy of the forum jurisdiction, even if it would not be contrary to a fundamental policy of the State or country whose law would govern in the absence of contractual designation. Standards for application of this doctrine relate primarily to concepts of sovereignty rather than commercial law and are thus left to the courts. Second, in determining whether to give effect to the parties' agreement that the law of a particular State or country will govern their relationship, courts must, of necessity, address some issues as to the basic validity of that agreement. These issues might relate, for example, to capacity to contract and absence of duress. This section does not address these issues. Third, this section leaves to other choice of law principles of the forum the issues of whether, and to what extent, the forum will apply the same law to the non-UCC aspects of a transaction that it applies to the aspects of the transaction governed by the Uniform Commercial Code.

28-1-302. Variation by agreement. — (a) Except as otherwise provided in subsection (b) of this section or elsewhere in the uniform commercial code, the effect of provisions of the uniform commercial code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the uniform commercial code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the uniform commercial code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the uniform commercial code of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

History.
I.C., § 28-1-302, as added by 2004, ch. 43, § 20, p. 136.

OFFICIAL COMMENT

Source: Former Sections 1-102(3)-(4) and 1-204(1).

Changes: This section combines the rules from subsections (3) and (4) of former Section 1-102 and subsection (1) of former Section 1-204. No substantive changes are made.

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: "the effect" of its provisions may be varied by "agreement." The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in pre-Code cases such as *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926).

Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104; nor can they change the meaning of such terms as "bona fide purchaser," "holder in due course," or "due negotiation," as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. "Agreement" here includes the effect given to course of dealing, usage of trade and course of performance by Sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under Section 1-103. The rights of third parties under Section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Uniform Commercial Code and to the general exception stated here. The specific exceptions vary in explicitness: the statute of frauds found in Section 2-201, for example, does not explicitly preclude oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the "contract" made unenforceable; Section 9-602, on the other hand, is a quite explicit limitation on freedom of contract. Under the exception for "the obligations of good faith, diligence, reasonableness and care prescribed by [the Uniform Commercial Code]," provisions of the Uniform Commercial Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, Section 1-303 incorporating into the agreement prior course of dealing and usages of trade is of particular importance.

Subsection (b) also recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The parties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. An agreement that varies the effect of provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UNCITRAL or Unidroit (*see, e.g.*, Unidroit Principles of International Commercial Contracts), or non-legal codes such as trade codes.

3. Subsection (c) is intended to make it clear that, as a matter of drafting, phrases such as "unless otherwise agreed" have been used to avoid controversy as to whether the subject matter of a particular section does or does not fall within the exceptions to subsection (b), but absence of such words contains no negative implication since under subsection (b) the general and residual rule is that the effect of all provisions of the Uniform Commercial Code may be varied by agreement.

28-1-303. Course of performance, course of dealing, and usage of trade. — (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in

question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade shall be construed wherever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to section 28-2-209, Idaho Code, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one (1) party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

History.

1967, ch. 161, § 1-205, p. 351; am. and redesig. 2004, ch. 43, § 21, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-205.

Cited in: Fox v. Mt. W. Elec., Inc., 137 Idaho 703, 52 P.3d 848 (2002).

Usage of Trade.

Grant of summary judgment in favor of lessor in his action seeking to recover unpaid rent for the rental of a Bobcat was appropriate because the term "working day" in the lease agreement was unambiguous. Swanson v. BECO Constr. Co., 145 Idaho 59, 175 P.3d 748 (2007).

Where, based upon the clear language of the contract and usage of trade, a buyer had the right to designate the fields from which an order of onions came, and the seller attempted to deliver onions that were not from the designated fields, the buyer rightfully rejected the non-conforming goods under § 28-2-601(a). Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

OFFICIAL COMMENT

Source: Former Sections 1-205, 2-208, and Section 2A-207.

Changes from former law: This section integrates the "course of performance" concept from Articles 2 and 2A into the principles of former Section 1-205, which deals with course of dealing and usage of trade. In so doing, the section slightly modifies the articulation of the course of performance rules to fit more comfortably with the approach and structure of former Section 1-205. There are also slight modifications to be more consistent with the definition of "agreement" in former Section 1-201(3). It should be noted that a course of performance that might otherwise establish a defense to the obligation of a party to a negotiable instrument is not available as a defense against a holder in due course who took the instrument without notice of that course of performance.

1. The Uniform Commercial Code rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead the meaning of the agreement of the

parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. "Course of dealing," as defined in subsection (b), is restricted, literally, to a sequence of conduct between the parties previous to the agreement. A sequence of conduct after or under the agreement, however, is a "course of performance." "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

3. The Uniform Commercial Code deals with "usage of trade" as a factor in reaching the commercial meaning of the agreement that the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade," the Uniform Commercial Code expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law." A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

4. A usage of trade under subsection (c) must have the "regularity of observance" specified. The ancient English tests for "custom" are abandoned in this connection. Therefore, it is not required that a usage of trade be "ancient or immemorial," "universal," or the like. Under the requirement of subsection (c) full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (Sections 1-304, 2-302) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be "reasonable." However, the emphasis is shifted. The very fact of commercial acceptance makes out a *prima facie* case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

6. Subsection (d), giving the prescribed effect to usages of which the parties "are or should be aware," reinforces the provision of subsection (c) requiring not universality but only the described "regularity of observance" of the practice or method. This subsection also reinforces the point of subsection (c) that such usages may be either general to trade or particular to a special branch of trade.

7. Although the definition of "agreement" in Section 1-201 includes the elements of course of performance, course of dealing, and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare Section 1-302(c).

8. In cases of a well established line of usage varying from the general rules of the Uniform Commercial Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

9. Subsection (g) is intended to insure that this Act's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

28-1-304. Obligation of good faith. — Every contract or duty within the uniform commercial code imposes an obligation of good faith in its performance and enforcement.

History.
1967, ch. 161, § 1-203, p. 351; am. and redesig. 2004, ch. 43, § 22, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-203.

OFFICIAL COMMENT

Source: Former Section 1-203.
Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-203.

1. This section sets forth a basic principle running throughout the Uniform Commercial Code. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. While this duty is explicitly stated in some provisions of the Uniform Commercial Code, the applicability of the duty is broader than merely these situations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Act. It is further implemented by Section 1-303 on course of dealing, course of performance, and usage of trade. This section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

2. "Performance and enforcement" of contracts and duties within the Uniform Commercial Code include the exercise of rights created by the Uniform Commercial Code.

28-1-305. Remedies to be liberally administered. — (a) The remedies provided by the uniform commercial code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in the uniform commercial code or by other rule of law.

(b) Any right or obligation declared by the uniform commercial code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History.
1967, ch. 161, § 1-106, p. 351; am. and redesig. 2004, ch. 43, § 23, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-106.

Lost Profit Damages.
District court had not erred in its findings regarding lost profit damages for the increased cost of raising fish during years four and five of the contract between a trout hatchery and a trout grower and for increased mortality losses during the same period because the hatchery failed to timely accept delivery of the trout according to the terms of the contract. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

Cited in: Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

OFFICIAL COMMENT

Source: Former Section 1-106.
Changes from former law: Other than changes in the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-106.

1. Subsection (a) is intended to effect three propositions. The first is to negate the possibility of unduly narrow or technical interpretation of remedial provisions by providing that the remedies in the Uniform Commercial Code are to be liberally administered to the end stated in this section. The second is to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Uniform Commercial Code elsewhere makes it clear that damages must be minimized. Cf. Sections 1-304, 2-706(1), and 2-712(2). The third purpose of subsection (a) is to reject any doctrine that damages

must be calculable with mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. Section 2-204(3).

2. Under subsection (b), any right or obligation described in the Uniform Commercial Code is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. Sections 1-103, 2-716.

3. "Consequential" or "special" damages and "penal" damages are not defined in the Uniform Commercial Code; rather, these terms are used in the sense in which they are used outside the Uniform Commercial Code.

28-1-306. Waiver or renunciation of claim or right after breach. — A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

History.
1967, ch. 161, § 1-107, p. 351; am. and redesig. 2004, ch. 43, § 24, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-107.

OFFICIAL COMMENT

Source: Former Section 1-107.

Changes from former law: This section changes former law in two respects. First, former Section 1-107, requiring the "delivery" of a "written waiver or renunciation" merges the separate concepts of the aggrieved party's agreement to forgo rights and the manifestation of that agreement. This section separates those concepts, and explicitly requires *agreement* of the aggrieved party. Second, the revised section reflects developments in electronic commerce by providing for memorialization in an authenticated record. In this context, a party may "authenticate" a record by (i) signing a record that is a writing or (ii) attaching to, or logically associating with a record that is not a writing, an electronic sound, symbol or process with the present intent to adopt or accept the record. See Sections 1-201(b)(37) and 9-102(a)(7).

1. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where the agreement effecting such renunciation is memorialized in a record authenticated by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith. (Section 1-304).

28-1-307. Prima facie evidence by third party documents. — A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History.
1967, ch. 161, § 1-202, p. 351; am. and redesig. 2004, ch. 43, § 25, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-202.

OFFICIAL COMMENT

Source: Former Section 1-202.

Changes from former law: Except for minor stylistic changes, this Section is identical to former Section 1-202.

1. This section supplies judicial recognition for documents that are relied upon as trustworthy by commercial parties.

2. This section is concerned only with documents that have been given a preferred status by the parties themselves who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract that authorized or required the doc-

ument. The list of documents is intended to be illustrative and not exclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

4. Documents governed by this section need not be writings if records in another medium are generally relied upon in the context.

28-1-308. Performance or acceptance under reservation of rights. — (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

History.
1967, ch. 161, § 1-207, p. 351; am. 1993, ch. 288, § 49, p. 1019; am. and redesig. 2004, ch. 43, § 26, p. 136.

Compiler's Notes. This section was formerly compiled as § 28-1-207.

OFFICIAL COMMENT

Source: Former Section 1-207.

Changes from former law: This section is identical to former Section 1-207.

1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment "without prejudice," "under protest," "under reserve," "with reservation of all our rights," and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made "subject to satisfaction of our purchaser," "subject to acceptance by our customers," or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as that party makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of this Act such as those under which the buyer's remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other believes to be unwarranted.

Subsection (b) states that this section does not apply to an accord and satisfaction. Section 3-311 governs if an accord and satisfaction is attempted by tender of a negotiable instrument as stated in that section. If Section 3-311 does not apply, the issue of whether an accord and satisfaction has been effected is determined by the law of contract. Whether or not Section 3-311 applies, this section has no application to an accord and satisfaction.

28-1-309. Option to accelerate at will. — A term providing that one (1) party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

History.
1967, ch. 161, § 1-208, p. 351; am. and redesig. 2004, ch. 43, § 27, p. 136.

Compiler's Notes. This section was formerly codified as § 28-1-208.

OFFICIAL COMMENT

Source: Former Section 1-208.
Changes from former law: Except for minor stylistic changes, this section is identical to former Section 1-208.

1. The common use of acceleration clauses in many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an obligation of payment or performance which in the first instance is due at a future date.

28-1-310. Subordinated obligations. — An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

History.
I.C., § 28-1-310, as added by 2004, ch. 43, § 28, p. 136.

Compiler's Notes. Section 29 of S.L. 2004, ch. 43 is compiled as § 28-2-202.

OFFICIAL COMMENT

Source: Former Section 1-209.
Changes from former law: This section is substantively identical to former Section 1-209. The language in that section stating that it "shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it" has been deleted.

1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or nonnegotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation," "subordination," and "subordinated creditor."

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" practice has on occasion been explained in terms of "equitable lien," "equitable assignment," or "constructive trust," but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "that creates a security interest in personal property ... by contract" or a "sale of accounts, chattel paper, payment intangibles, or promissory notes" within the meaning of Section 9-109. On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

3. The enforcement of subordination agreements is largely left to supplementary principles under Section 1-103. If the subordinated debt is evidenced by a certificated security, Section 8-202(a) authorizes enforcement against purchasers on terms stated or re-

ferred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under Sections 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Sections 3-302(3)(a), 3-306, and 8-317 severely limit the rights of levying creditors of a subordinated creditor in such cases.

CHAPTER 2

UNIFORM COMMERCIAL CODE — SALES

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

28-2-101. Short title.

Scope.

Sale of a used vehicle falls under Idaho's version of the Uniform Commercial Code governing sales, §§ 28-2-101 through 28-2-725. Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003).

28-2-102. Scope — Certain security and other transactions excluded from this chapter.

Scope.

Where a company that provided services in designing and testing fire alarm systems sued a firm that installed electrical wiring and conduit for money owed for materials and services, and there was an implied-in-fact contract, the trial court did not err by finding that the predominant factor of the underlying transaction was services and that the Uniform Commercial Code did not apply. Fox v. Mt. W. Elec., Inc., 137 Idaho 703, 52 P.3d 848 (2002).

28-2-103. Definitions and index of definitions. — (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance." Section 28-2-606.

"Banker's credit." Section 28-2-325.

"Between merchants." Section 28-2-104.

"Cancellation." Section 28-2-106.

"Commercial unit." Section 28-2-105.

"Confirmed credit." Section 28-2-325.

"Conforming to contract." Section 28-2-106.

"Contract for sale." Section 28-2-106.

"Cover." Section 28-2-712.

"Entrusting." Section 28-2-403.

"Financing agency." Section 28-2-104.

"Future goods." Section 28-2-105.

"Goods." Section 28-2-105.

"Identification." Section 28-2-501.

"Installment contract." Section 28-2-612.

"Letter of credit." Section 28-2-325.

"Lot." Section 28-2-105.

"Merchant." Section 28-2-104.

"Overseas." Section 28-2-323.

"Person in position of seller." Section 28-2-707.

"Present sale." Section 28-2-106.

"Sale." Section 28-2-106.

"Sale on approval." Section 28-2-326.

"Sale or return." Section 28-2-326.

"Termination." Section 28-2-106.

(3) "Control" as provided in section 28-7-106 and the following definitions in other chapters apply to this chapter:

"Check." Section 28-3-104.

"Consignee." Section 28-7-102.

"Consignor." Section 28-7-102.

"Consumer goods." Section 28-9-102.

"Dishonor." Section 28-3-502.

"Draft." Section 28-3-104.

(4) In addition, chapter 1, title 28, Idaho Code, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.
1967, ch. 161, § 2-103, p. 351; am. 2001, ch. 208, § 5, p. 704; am. 2004, ch. 42, § 4, p. 77.

Compiler's Notes. Sections 2 and 5 of S.L. 2004, ch. 42 are compiled as §§ 28-7-101 and 28-2-104.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Subsection (1): Section 76, Uniform Sales Act.

Changes:

The definitions of "buyer" and "seller" have been slightly rephrased, the reference in Section 76 of the prior Act to "any legal successor in interest of such person" being omitted. The definition of "receipt" is new.

Purposes of Changes and New Matter:

1. The phrase "any legal successor in interest of such person" has been eliminated since Section 2-210 of this Article [Chapter], which limits some types of delegation of performance on assignment of a sales contract, makes it clear that not every such successor can be safely included in the definition. In every ordinary case, however, such successors are as of course included.

2. "Receipt" must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to "deliver" even though the buyer may never "receive" the goods. Delivery with respect to documents of title is defined in Article [Chapter] 1 and requires transfer of physical delivery of a tangible document of title and transfer of control of an electronic document of title. Otherwise the many divergent incidents of delivery are handled incident by incident.

Cross References:

Point 1: See Section 2-210 and Comment thereon.

Point 2: Section 1-201.

Definitional Cross Reference:

"Person." Section 1-201.

28-2-104. Definitions — "Merchant" — "Between merchants" — "Financing agency." — (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History.

1967, ch. 161, § 2-104, p. 351; am. 2004, ch. 42, § 5, p. 77.

Compiler's Notes. Section 6 of S.L. 2004, ch. 42 is compiled as § 28-2-310.

28-2-105. Definitions — Transferability — "Goods" — "Future" goods — "Lot" — "Commercial unit."

Cited in: Jen-Rath Co. v. KIT Mfg. Co., 137 Idaho 330, 48 P.3d 659 (2002).

Collateral References. What constitutes "future goods" within scope of U.C.C. article 2. 48 A.L.R.6th 475.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

28-2-201. Formal requirements — Statute of frauds.

Existence of Contract.

Surety's arguments concerning the statute of frauds misapprehended the issue, because the statute of frauds would only be relevant as a defense to show that the sub-subcontractor did not have a direct contractual relationship with the subcontractor and any applicable exception to the statute of frauds would depend upon the conduct of the sub-subcontractor and subcontractor; there was no requirement under § 54-1927 that the sub-subcontractor have any contractual relationship with the surety. Evco Sound & Elecs., Inc. v. Seaboard Sur. Co., 148 Idaho 357, 223 P.3d 740 (2009).

28-2-202. Final written expression — Parol or extrinsic evidence.

— Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of performance, course of dealing, or usage of trade (section 28-1-303); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History.

1967, ch. 161, § 2-202, p. 351; am. 2004, ch. 43, § 29, p. 136.

Compiler's Notes. Section 28 of S.L. 2004, ch. 43 is compiled as § 28-1-310 and section 30 contains a repeal.

ANALYSIS

Consistent terms.
Proper admission of extrinsic evidence.

Consistent Terms.

Where a sales agreement provided that a bankruptcy trustee sold all assets of a bankruptcy debtor located at a restaurant to the debtor's landlord, but the trustee subsequently asserted that prior emails between the trustee and the landlord indicated that the trustee did not intend to sell certain equipment, the sales agreement with a merger clause was binding; parol evidence was not available to add terms to the agreement since the emails did not resolve whether the equipment was included in the sale and, in any event, additional terms to exclude the equipment were not consistent with the agreement. Bankr. Estate of Wing Foods, Inc. v. CCF Leasing Co. (In re Wing Foods), 2010 Bankr. LEXIS 114 (Bankr. D. Idaho Jan. 14, 2010).

Proper Admission of Extrinsic Evidence.

Trial court did not err in admitting into evidence preliminary negotiations between the parties regarding the number and dates of proposed deliveries because the contract did not contain a merger clause to indicate that it was meant as the complete and exclusive statement of the terms. The negotiations were admissible because they were made prior to or contemporaneous with the contract and were consistent with its terms. Borah v. McCandless, 147 Idaho 73, 205 P.3d 1209 (2009).

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None.

Purposes: 1. This section definitely rejects:

(a) Any assumption that because a writing has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon;

(b) The premise that the language used has the meaning attributable to such language by rules of construction existing in the law rather than the meaning which arises out of

the commercial context in which it was used; and

(c) The requirement that a condition precedent to the admissibility of the type of evidence specified in paragraph (a) is an original determination by the court that the language used is ambiguous.

2. Paragraph (a) makes admissible evidence of course of dealing, usage of trade and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what they intended the writing to mean.

3. Under paragraph (b) consistent additional terms, not reduced to writing, may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms. If the additional terms are such that, if agreed upon, they would certainly have been included in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact.

Cross References:

Point 3: Sections 1-303, 2-207, 2-302 and 2-316.

Definitional Cross References:

"Agreed" and "agreement." Section 1-201.

"Course of dealing." Section 1-303.

"Course of performance." Section 1-303.

"Party." Section 1-201.

"Term." Section 1-201.

"Usage of trade." Section 1-303.

"Written" and "writing." Section 1-201.

28-2-204. Formation in general.

Facts Held Sufficient to Show Contract.

District court did not err in concluding that a valid contract had been formed between a trout hatchery and a trout grower and that any disagreement between the parties regarding "market size" was not so fundamental as to have gone to the heart of the very essence of the contract. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

District court did not err in finding that a trout hatchery and a trout grower had an understanding about what fish were "market size"; the course of performance between the parties over the first three years of the contract, as well as their course of dealing prior to executing the agreement, confirmed that the parties intended market size to indicate trout approximating one pound live weight. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

District court did not err in finding that the language in an agreement between a trout hatchery and a trout grower regarding the "typical" number of harvests and the need for "continuous and uniform delivery" were sufficient to indicate an implied obligation to take deliveries within a reasonable time and with limited frequency. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

28-2-208. Course of performance or practical construction. [Repealed.]

Compiler's Notes. This section, which comprised 1967, ch. 161, § 2-208, p. 351, was repealed by S.L. 2004, ch. 43, § 30.

28-2-209. Modification, rescission and waiver.

Applicability.

Agreement between the buyer and the sellers, as orally modified, was enforceable under the applicable statute of frauds, subsection (3) of this section. Although the record showed that the oral modification altered the purchase price of the goods, because the contract price for the goods still exceeded $500 and the asset purchase agreement, as modified, was still within the Uniform Commercial Code statute of frauds. Apple's Mobile Catering, LLC v. O'Dell, 149 Idaho 211, 233 P.3d 142 (2010).

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

28-2-302. Unconscionable contract or clause.

Applicability.

This section does not apply to the public utilities commission, because the commission is not a court. McNeal v. Idaho PUC, 142 Idaho 685, 132 P.3d 442 (2006), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

28-2-306. Output, requirements and exclusive dealings.

ANALYSIS

Damages.
Requirements contract.

Damages.

While damages might have been difficult to determine it was clear that the breach of an output contract by a trout hatchery had deprived a trout grower of the opportunity to complete performance of the contact for the remaining two years and that losses for those years had occurred, thus, the trial court erred in not awarding damages for years 6 and 7 and the issue was remanded. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

Requirements Contract.

In a breach of a contract action, as the quantity of fish under the agreement was not only subject to the trout farmers' good faith output of market size trout, but also subject to the fish hatchery's good faith requirements for trout in its resale market, the parties entered into an output/requirements contract under this section. Griffith v. Clear Lakes Trout Co., 146 Idaho 613, 200 P.3d 1162 (2009).

Collateral References. Establishment and construction of requirements contracts under § 2-306(1) of Uniform Commercial Code. 94 A.L.R.5th 247.

28-2-309. Absence of specific time provisions — Notice of termination.

Reasonableness.

It could not be said that defendant, a manufacturer of recreational homes, provided reasonable notification of an impending termination of a contract with plaintiff, a dealer of manufactured homes, as a matter of law. Jen-Rath Co. v. KIT Mfg. Co., 137 Idaho 330, 48 P.3d 659 (2002).

After a buyer and seller entered into a contract for the sale of logs for the construction of a log cabin, and the contract failed to set forth a delivery date, the buyer waited for delivery of a complete log cabin package for over a year after paying the seller 70 percent of the contract price. The buyer then arranged to purchase the balance of logs needed to complete her cabin from another supplier, and the seller was found to have breached the contract by failing to deliver the logs within a reasonable time. Borah v. McCandless, 147 Idaho 73, 205 P.3d 1209 (2009).

28-2-310. Open time for payment or running of credit — Authority to ship under reservation. — Unless otherwise agreed

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28-2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is

to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History.
1967, ch. 161, § 2-310, p. 351; am. 2004, ch. 42, § 6, p. 77.

Compiler's Notes. Sections 5 and 7 of S.L. 2004, ch. 42 are compiled as §§ 28-2-104 and 28-2-323, respectively.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Sections 42 and 47(2), Uniform Sales Act.

Changes: Completely rewritten in this and other sections.

Purposes of Changes:

This section is drawn to reflect modern business methods of dealing at a distance rather than face to face. Thus:

1. Paragraph (a) provides that payment is due at the time and place "the buyer is to receive the goods" rather than at the point of delivery except in documentary shipment cases (paragraph (c)). This grants an opportunity for the exercise by the buyer of his preliminary right to inspection before paying even though under the delivery term the risk of loss may have previously passed to him or the running of the credit period has already started.

2. Paragraph (b) while providing for inspection by the buyer before he pays, protects the seller. He is not required to give up possession of the goods until he has received payment, where no credit has been contemplated by the parties. The seller may collect through a bank by a sight draft against an order bill of lading "hold until arrival; inspection allowed." The obligations of the bank under such a provision are set forth in Part 5 of Article [Chapter] 4. Under subsection (c), in the absence of a credit term, the seller is permitted to ship under reservation and if he does payment is then due where and when the buyer is to receive delivery of the tangible documents of title. In the case of an electronic document of title, payment is due when the buyer is to receive delivery of the electronic document and at the seller's place of business, or if none, the seller's residence. Delivery as to documents of title is stated in Article 1, Section 1-201.

3. Unless otherwise agreed, the place for the delivery of the documents and payment is the buyer's city but the time for payment is only after arrival of the goods, since under paragraph (b), and Sections 2-512 and 2-513 the buyer is under no duty to pay prior to inspection. Tender of a document of title requires that the seller be ready, willing and able to transfer possession of a tangible document of title or control of an electronic document of title to the buyer.

4. Where the mode of shipment is such that goods must be unloaded immediately upon arrival, too rapidly to permit adequate inspection before receipt, the seller must be guided by the provisions of this Article [Chapter] on inspection which provide that if the seller wishes to demand payment before inspection, he must put an appropriate term into the contract. Even requiring payment against documents will not of itself have this desired result if the documents are to be held until the arrival of the goods. But under (b) and (c) if the terms are C.I.F., C.O.D., or cash against documents payment may be due before inspection.

5. Paragraph (d) states the common commercial understanding that an agreed credit period runs from the time of shipment or from that dating of the invoice which is commonly recognized as a representation of the time of shipment. The provision concerning any delay in sending forth the invoice is included because such conduct results in depriving the buyer of his full notice and warning as to when he must be prepared to pay.

Cross References:

Generally: Part 5.

Point 1: Section 2-509.

Point 2: Sections 2-505, 2-511, 2-512, 2-513 and Article [Chapter] 4.

Point 3: Sections 2-308(b), 2-512 and 2-513.

Point 4: Section 2-513(3)(b).

Definitional Cross References:

"Buyer." Section 2-103.

"Delivery." Section 1-201.

"Document of title." Section 1-201.

"Goods." Section 2-105.

"Receipt of goods." Section 2-103.

"Seller." Section 2-103.

"Send." Section 1-201.

"Term." Section 1-201.

28-2-311. Options and cooperation respecting performance.

Good Faith.

Where, based upon the clear language of the contract and usage of trade, a buyer had the right to designate the fields from which an order of onions came, and the seller attempted to deliver onions that were not from the designated fields, the buyer rightfully rejected the non-conforming goods. Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

28-2-313. Express warranties by affirmation, promise, description, sample.

Breach of Express Warranty.

By way of letter, a weather conditioning corporation made an express warranty that a dehumidifier was fit for the particular purpose of eliminating the odor and humidity problems at an athletic club, and there was substantial, competent evidence that the corporation breached the warranty because the dehumidifier was inadequate to maintain relative humidity in the pool area according to the industry standard. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

28-2-314. Implied warranty — Merchantability — Usage of trade.

Analysis

Latent defects.
Merchantability.

Latent Defects.

Implied warranties can apply to goods with latent defects. Hansen-Rice, Inc. v. Celotex Corp., 414 F. Supp. 2d 970 (D. Idaho 2006).

Merchantability.

Even if applicable to the car manufacturer, the implied warranty could not be read to require the distribution of a mouse proof vehicle; there was no showing of how the mice entered the vehicle, such that the theoretical defect could not be identified and there was insufficient evidence to submit the issue to the jury. Powers v. Am. Honda Motor Co., 139 Idaho 333, 79 P.3d 154 (2003).

28-2-315. Implied warranty — Fitness for particular purpose.

Application.

This section does not create liability for failing to comply with labeling regulations. Millenkamp v. Davisco Foods Int'l, Inc., 562 F.3d 971 (9th Cir. 2009).

28-2-316. Exclusion or modification of warranties.

Disclaimer.

Used car dealership excluded the warranty of merchantability from the sale contract for a used Jeep it sold to a consumer; the sale contract stated: "This unit sold as is. No warranty or guarantee stated or implied." The buyer was not permitted to revoke his acceptance upon later discovering that the Jeep previously sustained collision damage that was insufficiently repaired. Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003).

28-2-323. Form of bill of lading required in overseas shipment — "Overseas." — (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of

the full set; otherwise only one (1) part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of section 28-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History.
1967, ch. 161, § 2-323, p. 351; am. 2004, ch. 42, § 7, p. 77.

Compiler's Notes. Sections 6 and 8 of S.L. 2004, ch. 42 are compiled as §§ 28-2-310 and 28-2-401, respectively.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. Subsection (1) follows the "American" rule that a regular bill of lading indicating delivery of the goods at the dock for shipment is sufficient, except under a term "F.O.B. vessel." See Section 2-319 and comment thereto.

2. Subsection (2) deals with the problem of bills of lading covering deep water shipments, issued not as a single bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay against presentation of the first part of a set if the part is sent from overseas even though the contract of the buyer requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming. In accord with the amendment to Section 7-304, bills of lading in a set are limited to tangible bills.

This subsection codifies that practice as between buyer and seller. Article [Chapter] 5 (Section 5-113) authorizes banks presenting drafts under letters of credit to give indemnities against the missing parts, and this subsection means that the buyer must accept and act on such indemnities if he in good faith deems them adequate. But neither this subsection nor Article [Chapter] 5 decides whether a bank which has issued a letter of credit is similarly bound. The issuing bank's obligation under a letter of credit is independent and depends on its own terms. See Article [Chapter] 5.

Cross References:
Sections 2-508 (2), 5-113.

Definitional Cross References:
"Bill of lading." Section 1-201.
"Buyer." Section 2-103.
"Contract." Section 1-201.
"Delivery." Section 1-201.
"Financing agency." Section 2-104.
"Person." Section 1-201.
"Seller." Section 2-103.
"Send." Section 1-201.
"Term." Section 1-201.

28-2-326. Sale on approval and sale or return — Rights of creditors.

Collateral References. "Sale on approval" and "sale or return" contracts under Uniform Commercial Code § 2-326. 44 A.L.R.6th 441.

Part 4. Title, Creditors and Good Faith Purchasers

28-2-401. Passing of title — Reservation for security — Limited application of this section. — Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or

other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on secured transactions (chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale."

History.
1967, ch. 161, § 2-401, p. 351; am. 2004, ch. 42, § 8, p. 77.

Compiler's Notes. Sections 7 and 9 of S.L. 2004, ch. 42 are compiled as §§ 28-2-323 and 28-2-503, respectively.

Cited in: State v. Bennett, 150 Idaho 278, 246 P.3d 387 (2010).

Application.
The official comment to paragraph (2)(a) of this section makes it clear that the Uniform Commercial Code's determination of the situs of sale, or transfer of title, is not controlling in determining whether a public regulation applies to a given transaction; therefore, the Uniform Commercial Code was irrelevant to the determination of where appellant's cigarette sales took place, and the supreme court of Idaho held that those cigarette sales took place in Idaho for purposes of the complementary act. State v. Maybee, 148 Idaho 520, 224 P.3d 1109, cert. denied, — U.S. —, 131 S. Ct. 150, 178 L. Ed. 2d 37 (2010).

OFFICIAL COMMENT

Prior Uniform Statutory Provision: See generally, Sections 17, 18, 19 and 20, Uniform Sales Act.

Purposes: To make it clear that:

1. This Article [Chapter] deals with the issues between seller and buyer in terms of step by step performance or nonperformance under the contract for sale and not in terms of whether or not "title" to the goods has passed. That the rules of this section in no way alter the rights of either the buyer, seller or third parties declared elsewhere in the Article [Chapter] is made clear by the preamble of this section. This section, however, in no way intends to indicate which line of interpretation should be followed in cases where the applicability of "public" regulation depends upon a "sale" or upon location of "title" without further definition. The basic policy of this Article [Chapter] that known purpose and reason should govern interpretation cannot extend beyond the scope of its own provisions. It is therefore necessary to state what a "sale" is and when title passes under this Article [Chapter] in case the courts deem any public regulation to incorporate the defined term of the "private" law.

2. "Future" goods cannot be the subject of a present sale. Before title can pass the goods must be identified in the manner set forth in Section 2-501. The parties, however, have full liberty to arrange by specific terms for the passing of title to goods which are existing.

3. The "special property" of the buyer in goods identified to the contract is excluded from the definition of "security interest"; its incidents are defined in provisions of this Article [Chapter] such as those on the rights of the seller's creditors, on good faith purchase, on the buyer's right to goods on the seller's insolvency, and on the buyer's right to specific performance or replevin.

4. The factual situations in subsections (2) and (3) upon which passage of title turn actually base the test upon the time when the seller has finally committed himself in regard to specific goods. Thus in a "shipment" contract he commits himself by the act of making the shipment. If shipment is not contemplated subsection (3) turns on the seller's final commitment, i.e. the delivery of documents or the making of the contract. As to delivery of an electronic document of title, see definition of delivery in Article 1, Section 1-201. This Article does not state a rule as to the place of title passage as to goods covered by an electronic document of title.

Cross References:

Point 2: Sections 2-102, 2-501 and 2-502.

Point 3: Sections 1-201, 2-402, 2-403, 2-502 and 2-716.

Definitional Cross References:

"Agreement." Section 1-201.
"Bill of lading." Section 1-201.
"Buyer." Section 2-103.
"Contract." Section 1-201.
"Contract for sale." Section 2-106.
"Delivery." Section 1-201.
"Document of title." Section 1-201.
"Good faith." Section 2-103.
"Goods." Section 2-105.
"Party." Section 1-201.
"Purchaser." Section 1-201.
"Receipt" of goods. Section 2-103.
"Remedy." Section 1-201.
"Rights." Section 1-201.
"Sale." Section 2-106.
"Security interest." Section 1-201.
"Seller." Section 2-103.
"Send." Section 1-201.

28-2-403. Power to transfer — Good faith purchase of goods — "Entrusting." — (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase, the purchaser has such power even though:

(a) The transferor was deceived as to the identity of the purchaser; or

(b) The delivery was in exchange for a check which is later dishonored; or

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9) and documents of title (chapter 7).

History.
1967, ch. 161, § 2-403, p. 351; am. 1993, ch. 288, § 50, p. 1019; am. 2001, ch. 21, § 1, p. 27.

Compiler's Notes. This section is set out above to correct an error appearing in the section heading in the bound volume.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Sections 20(4), 23, 24, 25, Uniform Sales Act; Section 9, especially 9(2), Uniform Trust Receipts Act; Section 9, Uniform Conditional Sales Act.

Changes: Consolidated and rewritten.

Purposes of Changes:

To gather together a series of prior uniform statutory provisions and the case-law thereunder and to state a unified and simplified policy on good faith purchase of goods.

1. The basic policy of our law allowing transfer of such title as the transferor has is generally continued and expanded under subsection (1). In this respect the provisions of the section are applicable to a person taking by any form of "purchase" as defined by this Act. Moreover the policy of this Act expressly providing for the application of supplementary general principles of law to sales transactions wherever appropriate joins with the present section to continue unimpaired all rights acquired under the law of agency or of apparent agency or ownership or other estoppel, whether based on statutory provisions or on case law principles. The section also leaves unimpaired the powers given to selling factors under the earlier Factors Acts. In addition subsection (1) provides specifically for the protection of the good faith purchaser for value in a number of specific situations which have been troublesome under prior law.

On the other hand, the contract of purchase is of course limited by its own terms as in a case of pledge for a limited amount or of sale of a fractional interest in goods.

2. The many particular situations in which a buyer in ordinary course of business from a dealer has been protected against reservation of property or other hidden interest are gathered by subsections (2)-(4) into a single principle protecting persons who buy in ordinary course out of inventory. Consignors have no reason to complain, nor have lenders who hold a security interest in the inventory, since the very purpose of goods in inventory is to be turned into cash by sale.

The principle is extended in subsection (3) to fit with the abolition of the old law of "cash sale" by subsection (1) (c). It is also freed from any technicalities depending on the extended law of larceny; such extension of the concept of theft to include trick, particular types of fraud, and the like is for the purpose of helping conviction of the offender; it has no proper application to the long-standing policy of civil protection of buyers from persons guilty of such trick or fraud. Finally, the policy is extended, in the interest of simplicity and sense, to any entrusting by a bailor; this is in consonance with the explicit provisions of Section 7-205 on the powers of a warehouse who is also in the business of buying and selling fungible goods of the kind he stores. As to entrusting by a secured party, subsection (2) is limited by the more specific provisions of Section 9-307 (1), which deny protection to a person buying farm products from a person engaged in farming operations.

3. The definition of "buyer in ordinary course of business" (Section 1-201) is effective here and preserves the essence of the healthy limitations engrafted by the case-law on the older statutes. The older loose concept of good faith and wide definition of value combined to create apparent good faith purchasers in many situations in which the result outraged common sense; the court's solution was to protect the original title especially by use of "cash sale" or of over-technical construction of the enabling clauses of the statutes. But such rulings then turned into limitations on the proper protection of buyers in the ordinary market. Section 1-201 (9) cuts down the category of buyer in ordinary course in such fashion as to take care of the results of the cases, but with no price either in confusion or in injustice to proper dealings in the normal market.

4. Except as provided in subsection (1), the rights of purchasers other than buyers in ordinary course are left to the Articles [Chapters] on Secured Transactions, Documents of Title, and Bulk Sales.

Cross References:

Point 1: Sections 1-103 and 1-201.

Point 2: Sections 1-201, 2-402, 7-205 and 9-307 (1).

Points 3 and 4: Sections 1-102, 1-201, 2-104, 2-707 and Articles [Chapters] 6, 7 and 9.

Definitional Cross References:

"Buyer in ordinary course of business." Section 1-201.

"Good faith." Sections 1-201 and 2-103.

"Goods." Section 2-105.

"Person." Section 1-201.

"Purchaser." Section 1-201.

"Signed." Section 1-201.

"Term." Section 1-201.

"Value." Section 1-201.

Part 5. Performance

28-2-503. Manner of seller's tender of delivery. — (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in chapter 9, title 28, Idaho Code, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of section 28-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

History.
1967, ch. 161, § 2-503, p. 351; am. 2004, ch. 42, § 9, p. 77.

Compiler's Notes. Sections 8 and 10 of S.L. 2004, ch. 42 are compiled as §§ 28-2-401 and 28-2-505, respectively.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: See Sections 11, 19, 20, 43 (3) and (4), 46 and 51, Uniform Sales Act.

Changes: The general policy of the above sections is continued and supplemented but subsection (3) changes the rule of prior section 19 (5) as to what constitutes a "destination" contract and subsection (4) incorporates a minor correction as to tender of delivery of goods in the possession of a bailee.

Purposes of Changes:

1. The major general rules governing the manner of proper or due tender or delivery are gathered in this section. The term "tender" is used in this Article [Chapter] in two different senses. In one sense it refers to "due tender" which contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and must be followed by actual performance if the other party shows himself ready to proceed. Unless the context unmistakably indicates otherwise this is the meaning of "tender" in this Article [Chapter] and the occasional addition of the word "due" is only for clarity and emphasis. At other times it is used to refer to an offer of goods or documents under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the other party in default if he fails to proceed in some manner. These concepts of tender would apply to tender of either tangible or electronic documents of title.

2. The seller's general duty to tender and deliver is laid down in Section 2-301 and more particularly in Section 2-507. The seller's right to a receipt if he demands one and receipts are customary is governed by Section 1-205. Subsection (1) of the present section proceeds to set forth two primary requirements of tender: first, that the seller "put and hold conforming goods at the buyer's disposition" and, second, that he "give the buyer any notice reasonably necessary to enable him to take delivery."

In cases in which payment is due and demanded upon delivery the "buyer's disposition" is qualified by the seller's right to retain control of the goods until payment by the provision of this Article [Chapter] on delivery on condition. However, where the seller is demanding payment on delivery he must first allow the buyer to inspect the goods in order to avoid impairing his tender unless the contract for sale is on C.I.F., C.O.D., cash against documents or similar terms negating the privilege of inspection before payment.

In the case of contracts involving documents the seller can "put and hold conforming goods at the buyer's disposition" under subsection (1) by tendering documents which give the buyer complete control of the goods under the provisions of Article [Chapter] 7 on due negotiation.

3. Under paragraph (a) of subsection (1) usage of the trade and the circumstances of the particular case determine what is a reasonable hour for tender and what constitutes a reasonable period of holding the goods available.

4. The buyer must furnish reasonable facilities for the receipt of the goods tendered by the seller under subsection (1), paragraph (b). This obligation of the buyer is no part of the seller's tender.

5. For the purposes of subsection (2) and (3) there is omitted from this Article [Chapter] the rule under prior uniform legislation that a term requiring the seller to pay the freight or cost of transportation to the buyer is equivalent to an agreement by the seller to deliver to the buyer or at an agreed destination. This omission is with the specific intention of negating the rule, for under this Article [Chapter] the "shipment" contract is regarded as the normal one and the "destination" contract as the variant type. The seller is not obligated to deliver at a named destination and bear the concurrent risk of loss until arrival, unless he has specifically agreed so to deliver or the commercial understanding of the terms used by the parties contemplates such delivery.

6. Paragraph (a) of subsection (4) continues the rule of the prior uniform legislation as to acknowledgment by the bailee. Paragraph (b) of subsection (4) adopts the rule that between the buyer and the seller the risk of loss remains on the seller during a period reasonable for securing acknowledgment of the transfer from the bailee, while as against all other parties the buyer's rights are fixed as of the time the bailee receives notice of the transfer.

7. Under subsection (5) documents are never "required" except where there is an express contract term or it is plainly implicit in the peculiar circumstances of the case or in a usage of trade. Documents may, of course, be "authorized" although not required, but such cases are not within the scope of this

subsection. When documents are required, there are three main requirements of this subsection: (1) "All": each required document is essential to a proper tender; (2) "Such": the documents must be the ones actually required by the contract in terms of source and substance; (3) "Correct form": all documents must be in correct form. These requirements apply to both tangible and electronic documents of title. When tender is made through customary banking channels, a draft may accompany or be associated with a document of title. The language has been broadened to allow for drafts to be associated with an electronic document of title. Compare Section 2-104(2) definition of financing agency.

When a prescribed document cannot be procured, a question of fact arises under the provision of this Article [Chapter] on substituted performance as to whether the agreed manner of delivery is actually commercially impracticable and whether the substitute is commercially reasonable.

Cross References:

Point 2: Sections 1-205, 2-301, 2-310, 2-507 and 2-513 and Article [Chapter] 7.

Point 5: Sections 2-308, 2-310 and 2-509.

Point 7: Section 2-614(1).

Specific matters involving tender are covered in many additional sections of this Article [Chapter]. See Sections 1-205, 2-301, 2-306 to 2-319, 2-321(3), 2-504, 2-507(2), 2-511(1), 2-513, 2-612 and 2-614.

Definitional Cross References:

"Agreement." Section 1-201.
"Bill of lading." Section 1-201.
"Buyer." Section 2-103.
"Conforming." Section 2-106.
"Contract." Section 1-201.
"Delivery." Section 1-201.
"Dishonor." Section 3-508.
"Document of title." Section 1-201.
"Draft." Section 3-104.
"Goods." Section 2-105.
"Notification." Section 1-201.
"Reasonable time." Section 1-204.
"Receipt" of goods. Section 2-103.
"Rights." Section 1-201.
"Seasonably." Section 1-204.
"Seller." Section 2-103.
"Written." Section 1-201.

28-2-505. Seller's shipment under reservation. — (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

History.

1967, ch. 161, § 2-505, p. 351; am. 2004, ch. 42, § 10, p. 77.

Compiler's Notes. Section 9 of S.L. 2004, ch. 42 is compiled as § 28-2-503.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 20(2), (3), (4), Uniform Sales Act.

Changes: Completely rephrased, the "powers" of the parties in cases of reservation being emphasized primarily rather than the "rightfulness" of reservation.

Purposes of Changes:

To continue in general the policy of the prior uniform statutory provision with certain modifications of emphasis and language, so that:

1. The security interest reserve to the seller under subsection (1) is restricted to

securing payment or performance by the buyer and the seller is strictly limited in his disposition and control of the goods as against the buyer and third parties. Under this Article [Chapter], the provision as to the passing of interest expressly applies "despite any reservation of security title" and also provides that the "rights, obligations and remedies" of the parties are not altered by the incidence of title generally. The security interest, therefore, must be regarded as a means given to the seller to enforce his rights against the buyer which is unaffected by and in turn does not affect the location of title generally. The rules set forth in subsection (1) are not to be altered by any apparent "contrary intent" of the parties as to passing of title, since the rights and remedies of the parties to the contract of sale, as defined in this Article [Chapter], rest on the contract and its performance or breach and not on stereotyped presumptions as to the location of title.

This Article [Chapter] does not attempt to regulate local procedure in regard to the effective maintenance of the seller's security interest when the action is in replevin by the buyer against the carrier.

2. Every shipment of identified goods under a negotiable bill of lading reserves a security interest in the seller under subsection (1) paragraph (a).

It is frequently convenient for the seller to make the bill of lading to the order of a nominee such as his agent at destination, the financing agency to which he expects to negotiate the document or the bank issuing a credit to him. In many instances, also, the buyer is made the order party. This Article [Chapter] does not deal directly with the question as to whether a bill of lading made out by the seller to the order of a nominee gives the carrier notice of any rights which the nominee may have so as to limit its freedom or obligation to honor the bill of lading in the hands of the seller as the original shipper if the expected negotiation fails. This is dealt with in the Article [Chapter] on Documents of Title (Article [Chapter] 7).

3. A non-negotiable bill of lading taken to a party other than the buyer under subsection (1) paragraph (b) reserves possession of the goods as security in the seller but if he seeks to withhold the goods improperly the buyer can tender payment and recover them.

4. In the case of a shipment by non-negotiable bill of lading taken to a buyer, the seller, under subsection (1) retains no security interest or possession as against the buyer and by the shipment he de facto loses control as against the carrier except where he rightfully and effectively stops delivery in transit. In cases in which the contract gives the seller the right to payment against delivery, the seller, by making an immediate demand for payment, can show that his delivery is conditional, but this does not prevent the buyer's power to transfer full title to a sub-buyer in ordinary course or other purchaser under Section 2-403.

5. Under subsection (2) an improper reservation by the seller which would constitute a breach in no way impairs such of the buyer's rights as result from identification of the goods. The security title reserved by the seller under subsection (1) does not protect his retaining possession or control of the document or the goods for the purpose of exacting more than is due him under the contract.

Cross References:

Point 1: Section 1-201.

Point 2: Article [Chapter] 7.

Point 3: Sections 2-501(2) and 2-504.

Point 4: Sections 2-403, 2-507(2) and 2-705.

Point 5: Sections 2-310, 2-319(4), 2-320(4), 2-501 and 2-502 and Article [Chapter] 7.

Definitional Cross References:

"Bill of lading." Section 1-201.

"Buyer." Section 2-103.

"Consignee." Section 7-102.

"Contract." Section 1-201.

"Contract for sale." Section 2-106.

"Delivery." Section 1-201.

"Financing agency." Section 2-104.

"Goods." Section 2-105.

"Holder." Section 1-201.

"Person." Section 1-201.

"Security interest." Section 1-201.

"Seller." Section 2-103.

28-2-506. Rights of financing agency. — (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

History.
1967, ch. 161, § 2-506, p. 351; am. 2004, ch. 42, § 11, p. 77.

Compiler's Notes. Section 12 of S.L. 2004, ch. 42 is compiled as § 28-2-509.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. "Financing agency" is broadly defined in this Article [Chapter] to cover every normal instance in which a party aids or intervenes in the financing of a sales transaction. The term as used in subsection (1) is not in any sense intended as a limitation and covers any other appropriate situation which may arise outside the scope of the definition.

2. "Paying" as used in subsection (1) is typified by the letter of credit, or "authority to pay" situation in which a banker, by arrangement with the buyer or other consignee, pays on behalf a draft for the price of the goods. It is immaterial whether the draft is formally drawn on the party paying or his principal, whether it is a sight draft paid in cash or a time draft "paid" in the first instance by acceptance, or whether the payment is viewed as absolute or conditional. All of these cases constitute "payment" under this subsection. Similarly, "purchasing for value" is used to indicate the whole area of financing by the seller's banker, and the principle of subsection (1) is applicable without any niceties of distinction between "purchase," "discount," "advance against collection" or the like. But it is important to notice that the only right to have the draft honored that is acquired is that against the buyer; if any right against any one else is claimed it will have to be under some separate obligation of that other person. A letter of credit does not necessarily protect purchasers of drafts. See Article [Chapter] 5. And for the relations of the parties to documentary drafts see Part 5 of Article [Chapter] 4.

3. Subsection (1) is made applicable to payments or advances against a draft which "relates to" a shipment of goods and this has been chosen as a term of maximum breadth. In particular the term is intended to cover the case of a draft against an invoice or against a delivery order. Further, it is unnecessary that there be an explicit assignment of the invoice attached to the draft to bring the transaction within the reason of this subsection.

4. After shipment, "the rights of the shipper in the goods" are merely security rights and are subject to the buyer's right to force delivery upon tender of the price. The rights acquired by the financing agency are similarly limited and, moreover, if the agency fails to procure any outstanding negotiable document of title, it may find its exercise of these rights hampered or even defeated by the seller's disposition of the document to a third party. This section does not attempt to create any new rights in the financing agency against the carrier which would force the latter to honor a stop order from the agency, a stranger to the shipment, or any new rights against a holder to whom a document of title has been duly negotiated under Article [Chapter] 7.

5. The definition of the language "on its face" from subsection (2) is designed to accommodate electronic documents of title without changing the requirement of regularity of the document.

Cross References:

Point 1: Section 2-104(2) and Article [Chapter] 4.

Point 2: Part 5 of Article [Chapter] 4, and Article [Chapter] 5.

Point 4: Sections 2-501 and 2-502(1) and Article [Chapter] 7.

Definitional Cross References:

"Buyer." Section 2-103.
"Document of title." Section 1-201.
"Draft." Section 3-104.
"Financing agency." Section 2-104.
"Good faith." Section 2-103.
"Goods." Section 2-105.
"Honor." Section 1-201.
"Purchase." Section 1-201.
"Rights." Section 1-201.
"Value." Section 1-201.

28-2-509. Risk of loss in the absence of breach. — (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier,

the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 28-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (section 28-2-327) and on effect of breach on risk of loss (section 28-2-510).

History.
1967, ch. 161, § 2-509, p. 351; am. 2004, ch. 42, § 12, p. 77.

Compiler's Notes. Sections 11 and 13 of S.L. 2004, ch. 42 are compiled as §§ 28-2-506 and 28-2-605, respectively.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 22, Uniform Sales Act.

Changes: Rewritten, subsection (3) of this section modifying prior law.

Purposes of Changes: To make it clear that:

1. The underlying theory of these sections on risk of loss is the adoption of the contractual approach rather than an arbitrary shifting of the risk with the "property" in the goods. The scope of the present section, therefore, is limited strictly to those cases where there has been no breach by the seller. Where for any reason his delivery or tender fails to conform to the contract, the present section does not apply and the situation is governed by the provisions on effect of breach on risk of loss.

2. The provisions of subsection (1) apply where the contract "requires or authorizes" shipment of the goods. This language is intended to be construed parallel to comparable language in the section on shipment by seller. In order that the goods be "duly delivered to the carrier" under paragraph (a) a contract must be entered into with the carrier which will satisfy the requirements of the section on shipment by the seller and the delivery must be made under circumstances which will enable the seller to take any further steps necessary to a due tender. The underlying reason of this subsection does not require that the shipment be made after contracting, but where, for example, the seller buys the goods afloat and later diverts the shipment to the buyer, he must identify the goods to the contract before the risk of loss can pass. To transfer the risk it is enough that a proper shipment and a proper identification come to apply to the same goods although, aside from special agreement the risk will not pass retroactively to the time of shipment in such a case.

3. Whether the contract involves delivery at the seller's place of business or at the situs of the goods, a merchant seller cannot transfer risk of loss and it remains upon him until actual receipt by the buyer, even though full payment has been made and the buyer has been notified that the goods are at his disposal. Protection is afforded him, in the event of breach by the buyer, under the next section.

The underlying theory of this rule is that a merchant who is to make physical delivery at his own place continues meanwhile to control the goods and can be expected to insure his interest in them. The buyer, on the other hand, has no control of the goods and it is extremely unlikely that he will carry insurance on goods not yet in his possession.

4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer of risk. Due delivery of a negotiable

document of title covering the goods or acknowledgment by the bailee that he holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in Article 1, Section 1-201 and the definition of control in Article 7, Section 7-106.

5. The provisions of this section are made subject by subsection (4) to the "contrary agreement" of the parties. This language is intended as the equivalent of the phrase "unless otherwise agreed" used more frequently throughout this Act. "Contrary" is in no way used as a word of limitation and the buyer and seller are left free to readjust their rights and risks as declared by this section in any manner agreeable to them. Contrary agreement can also be found in the circumstances of the case, a trade usage or practice, or a course of dealing or performance.

Cross References:
Point 1: Section 2-510(1).
Point 2: Sections 2-503 and 2-504.
Point 3: Sections 2-104, 2-503 and 2-510.
Point 4: Section 2-503(4).
Point 5: Section 1-201.
Definitional Cross References:
"Agreement." Section 1-201.
"Buyer." Section 2-103.
"Contract." Section 1-201.
"Delivery." Section 1-201.
"Document of title." Section 1-201.
"Goods." Section 2-105.
"Merchant." Section 2-104.
"Party." Section 1-201.
"Receipt" of goods. Section 2-103.
"Sale on approval." Section 2-326.
"Seller." Section 2-103.

Part 6. Breach, Repudiation and Excuse

28-2-601. Buyer's rights on improper delivery.

Analysis

Rejection of goods.
Right of rejection.

Rejection of Goods.

Athletic club owners' rejection of a dehumidifier occurred within a reasonable time after delivery because they needed to operate the dehumidifier in the athletic club to determine whether it conformed to the express warranty that it was fit for that particular purpose, and their continued use of the dehumidifier was necessary to mitigate damages and was not an act inconsistent with the corporation's ownership. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

Right of Rejection.

Where, based upon the clear language of the contract and usage of trade, a buyer had the right to designate the fields from which an order of onions came, and the seller attempted to deliver onions that were not from the designated fields, the buyer rightfully rejected the non-conforming goods under subsection (a). Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

28-2-602. Manner and effect of rightful rejection.

Rejection Within Reasonable Time.

Athletic club owners' rejection of a dehumidifier occurred within a reasonable time after delivery because they needed to operate the dehumidifier in the athletic club to determine whether it conformed to the express warranty that it was fit for that particular purpose, and their continued use of the dehumidifier was necessary to mitigate damages and was not an act inconsistent with the corporation's ownership. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

28-2-605. Waiver of buyer's objections by failure to particularize.

— (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

History.
1967, ch. 161, § 2-605, p. 351; am. 2004, ch. 42, § 13, p. 77.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. The present section rests upon a policy of permitting the buyer to give a quick and informal notice of defects in a tender without penalizing him for omissions in his statement, while at the same time protecting a seller who is reasonably misled by the buyer's failure to state curable defects.

2. Where the defect in a tender is one which could have been cured by the seller, a buyer who merely rejects the delivery without stating his objections to it is probably acting in commercial bad faith and seeking to get out of a deal which has become unprofitable. Subsection (1) (a), following the general policy of this Article [Chapter] which looks to preserving the deal wherever possible, therefore insists that the seller's right to correct his tender in such circumstances be protected.

3. When the time for cure is past, subsection (1) (b) makes it plain that a seller is entitled upon request to a final statement of objections upon which he can rely. What is needed is that he make clear to the buyer exactly what is being sought. A formal demand under paragraph (b) will be sufficient in the case of a merchant-buyer.

4. Subsection (2) applies to the particular case of documents the same principle which the section on effects of acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" or objections rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods and partly because defects in documents which are not taken as grounds for rejection are generally minor ones. The only defects concerned in the present subsection are defects in the documents which are apparent. This rule applies to both tangible and electronic documents of title. Where payment is required against the documents they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered without requiring such contemporary action as the payment from the buyer, the reason of the next section on what constitutes acceptance of goods, applies. Their acceptance by non-objection is therefore postponed until after a reasonable time for their inspection. In either situation, however, the buyer "waives" only the defects apparent in the documents.

Cross References:

Point 2: Section 2-508.

Point 4: Sections 2-512(2), 2-606(1) (b), 2-607(2).

Definitional Cross References:

"Between merchants." Section 2-104.

"Buyer." Section 2-103.

"Seasonably." Section 1-204.

"Seller." Section 2-103.

"Writing" and "written." Section 1-201.

28-2-607. Effect of acceptance — Notice of breach — Burden of establishing breach after acceptance — Notice of claim or litigation to person answerable over.

Collateral References. Sufficiency and timeliness of buyer's notice under UCC § 607(3)(a) of seller's breach of warranty. 89 A.L.R.5th 319.

28-2-608. Revocation of acceptance in whole or in part.

Analysis

Latent defects.
Remedy unavailable.

Latent Defects.

Section 28-2-725(2) provides that, where a warranty explicitly extends to future performance of goods, any breach of warranty occurs at the time of such performance. Thus, while a buyer has a duty to inspect goods at the time of delivery to find patent defects, he must be allowed a reasonable time after in-

specting and accepting the goods to discover latent defects under this section. Where farmers alleged a breach of warranty due to a latent defect in feed supplement supplier's product — its propensity to turn acidic and, thus, be harmful to calves if not refrigerated — the defect could not have been found on inspection at delivery. Millenkamp v. Davisco Foods Int'l, Inc., 562 F.3d 971 (9th Cir. 2009).

Remedy Unavailable.

Buyer of a used Jeep was not permitted to revoke his acceptance upon discovering that the Jeep previously sustained collision damage that was insufficiently repaired. Sale contract stated the dealership was to deliver the Jeep "as is" with all the faults it contained at the time of the sale. Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003).

Part 7. Remedies

28-2-705. Seller's stoppage of delivery in transit or otherwise. — (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28-2-702) and may stop delivery of carload, truckload, plane load or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History.

1967, ch. 161, § 2-705, p. 351; am. 2004, ch. 42, § 14, p. 77.

Compiler's Notes. Sections 13 and 15 of S.L. 2004, ch. 42 are compiled as §§ 28-2-605 and 28-12-103, respectively.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Sections 57-59, Uniform Sales Act; see also Sections 12, 14 and 42, Uniform Bills of Lading Act and Sections 9, 11 and 49, Uniform Warehouse Receipts Act.

Changes: This section continues and develops the above sections of the Uniform Sales Act in the light of the other uniform statutory provisions noted.

Purposes: To make it clear that:

1. Subsection (1) applies the stoppage principle to other bailees as well as carriers.

It also expands the remedy to cover the situations, in addition to buyer's insolvency, specified in the subsection. But since stoppage is a burden in any case to carriers, and might be a very heavy burden to them if it covered all small shipments in all these situations, the right to stop for reasons other than insolvency is limited to carload, truckload, plane load or larger shipments. The seller shipping to a buyer of doubtful credit can protect himself by shipping C.O.D.

Where stoppage occurs for insecurity it is merely a suspension of performance, and if assurances are duly forthcoming from the buyer the seller is not entitled to resell or divert.

Improper stoppage is a breach by the seller if it effectively interferes with the buyer's right to due tender under the section on manner of tender of delivery. However, if the bailee obeys an unjustified order to stop he may also be liable to the buyer. The measure of his obligation is dependent on the provisions of the Documents of Title Article [Chapter] (Section 7-303). Subsection 3(b) therefore gives him a right of indemnity as against the seller in such a case.

2. "Receipt by the buyer" includes receipt by the buyer's designated representative, the subpurchaser, when shipment is made direct to him and the buyer himself never receives the goods. It is entirely proper under this Article [Chapter] that the seller, by making such direct shipment to the sub-purchaser, be regarded as acquiescing in the latter's purchase and as thus barred from stoppage of the goods as against him.

As between the buyer and the seller, the latter's right to stop the goods at any time until they reach the place of final delivery is recognized by this section.

Under subsection (3)(c) and (d), the carrier is under no duty to recognize the stop order of a person who is a stranger to the carrier's contract. But the seller's right as against the buyer to stop delivery remains, whether or not the carrier is obligated to recognize the stop order. If the carrier does obey it, the buyer cannot complain merely because of that circumstance; and the seller becomes obligated under subsection (3)(b) to pay the carrier any ensuing damages or charges.

3. A diversion of a shipment is not a "reshipment" under subsection (2)(c) when it is merely an incident to the original contract of transportation. Nor is the procurement of "exchange bills" of lading which change only the name of the consignee to that of the buyer's local agent but do not alter the destination of a reshipment.

Acknowledgment by the carrier as a "warehouse" within the meaning of this Article [Chapter] requires a contract of a truly different character from the original shipment, a contract not in extension of transit but as a warehouse.

4. Subsection (3)(c) makes the bailee's obedience of a notification to stop conditional upon the surrender of possession or control of any outstanding negotiable document.

5. Any charges or losses incurred by the carrier in following the seller's orders, whether or not he was obligated to do so, fall to the seller's charge.

6. After an effective stoppage under this section the seller's rights in the goods are the same as if he had never made a delivery.

Cross References:

Sections 2-702 and 2-703.

Point 1: Sections 2-503 and 2-609, and Article [Chapter] 7.

Point 2: Section 2-103 and Article [Chapter] 7.

Definitional Cross References:

"Buyer." Section 2-103.

"Contract for sale." Section 2-106.

"Document of title." Section 1-201.

"Goods." Section 2-105.

"Insolvent." Section 1-201.

"Notification." Section 1-201.

"Receipt" of goods. Section 2-103.

"Rights." Section 1-201.

"Seller." Section 2-103.

28-2-706. Seller's resale including contract for resale.

Collateral References. Resale of goods under UCC § 2-706. 101 A.L.R.5th 563.

28-2-711. Buyer's remedies in general — Buyer's security interest in rejected goods.

Damages.

Where a buyer and seller entered into a contract for the sale of logs to be used by the buyer in the construction of a log cabin, and the seller breached the contract by failing to deliver the logs within a reasonable time, so that the buyer had to purchase the logs from another supplier in order to complete her cabin, the trial court properly awarded damages for the buyer's cost of cover. Borah v. McCandless, 147 Idaho 73, 205 P.3d 1209 (2009).

When a buyer rightfully rejects goods, the buyer can either cover and recover as dam-

ages the difference between the cost of cover and the contract price, or recover as damages the difference between the market price and the contract price. Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

28-2-712. "Cover" — Buyer's procurement of substitute goods.

Cited in: Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

28-2-713. Buyer's damages for nondelivery or repudiation.

Analysis

Applicability.
Measure of damages.

Applicability.

Buyer could not have recovered damages from a debtor's partners under this section because the partners were not the sellers under the original contract; that role was played by the debtor, and the buyer had acknowledged the fact. In re Morton, 2009 Bankr. LEXIS 1518 (Bankr. D. Idaho June 9, 2009).

Measure of Damages.

In a breach of express warranty case, there was no contention that the market price for a seven ton dehumidifier of the type described in the parties' contract was higher than the contract price for that dehumidifier; therefore, the only damages the owners of an athletic club were entitled to recover were incidental and consequential damages, and the district court's damage award had to be reduced by $10,659. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

When a buyer rightfully rejects goods, the buyer can either cover and recover as damages the difference between the cost of cover and the contract price, or recover as damages the difference between the market price and the contract price. Panike & Sons Farms, Inc. v. Smith, 147 Idaho 562, 212 P.3d 992 (2009).

28-2-714. Buyer's damages for breach in regard to accepted goods.

Cited in: Powers v. Am. Honda Motor Co., 139 Idaho 333, 79 P.3d 154 (2003).

28-2-715. Buyer's incidental and consequential damages.

Amount of Damages.

In a breach of express warranty case, there was no contention that the market price for a seven ton dehumidifier of the type described in the parties' contract was higher than the contract price for that dehumidifier; therefore, the only damages the owners of an athletic club were entitled to recover were incidental and consequential damages, and the district court's damage award had to be reduced by $10,659. Keller v. Inland Metals All Weather Conditioning, Inc., 139 Idaho 233, 76 P.3d 977 (2003).

28-2-721. Remedies for fraud.

Applicability.

Buyer could not recover damages from a debtor's partners under this section because the partners made no representations to the buyer, nor could they have breached the sales contract because the partners were not parties to the contract. In re Morton, 2009 Bankr. LEXIS 1518 (Bankr. D. Idaho June 9, 2009).

28-2-725. Statute of limitations in contracts for sale.

Analysis

Accrual of cause of action.
Latent defects.

Accrual of Cause of Action.

Seller of insulation was not entitled to summary judgment against a buyer who alleged that the seller's manufacturing process

caused the insulation to shrink after installation. Because it was unclear when the shrinkage, which was hidden after installation, should have been discovered, the court could not rule as a matter of law that the buyer's warranty claims were time-barred. Hansen-Rice, Inc. v. Celotex Corp., 414 F. Supp. 2d 970 (D. Idaho 2006).

Latent Defects.

Subsection (2) provides that, where a warranty explicitly extends to future performance of goods, any breach of warranty occurs at the time of such performance. Thus, while a buyer has a duty to inspect goods at the time of delivery to find patent defects, he must be allowed a reasonable time after inspecting and accepting the goods to discover latent defects under this section. Where farmers alleged a breach of warranty due to a latent defect in feed supplement supplier's product — its propensity to turn acidic and, thus, be harmful to calves if not refrigerated — the defect could not have been found on inspection at delivery. Millenkamp v. Davisco Foods Int'l, Inc., 562 F.3d 971 (9th Cir. 2009).

Collateral References. What constitutes warranty explicitly extending to "future performance" for purposes of UCC § 2-725(2). 81 A.L.R.5th 483.

CHAPTER 3

UNIFORM COMMERCIAL CODE — NEGOTIABLE INSTRUMENTS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

PART 4. LIABILITY OF PARTIES

PART 1. GENERAL PROVISIONS AND DEFINITIONS

28-3-103. Definitions. — (1) In this chapter:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact in the conduct or transaction concerned.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one (1) or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the

obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 28-1-201(b)(8)).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance"	Section 28-3-409
"Accommodated party"	Section 28-3-419
"Accommodation party"	Section 28-3-419
"Alteration"	Section 28-3-407
"Anomalous indorsement"	Section 28-3-205
"Blank indorsement"	Section 28-3-205
"Cashier's check"	Section 28-3-104
"Certificate of deposit"	Section 28-3-104
"Certified check"	Section 28-3-409
"Check"	Section 28-3-104
"Consideration"	Section 28-3-303
"Demand draft"	Section 28-3-104
"Draft"	Section 28-3-104
"Holder in due course"	Section 28-3-302
"Incomplete instrument"	Section 28-3-115
"Indorsement"	Section 28-3-204
"Indorser"	Section 28-3-204
"Instrument"	Section 28-3-104
"Issue"	Section 28-3-105
"Issuer"	Section 28-3-105
"Negotiable instrument"	Section 28-3-104
"Negotiation"	Section 28-3-201
"Note"	Section 28-3-104
"Payable at a definite time"	Section 28-3-108
"Payable on demand"	Section 28-3-108
"Payable to bearer"	Section 28-3-109
"Payable to order"	Section 28-3-109
"Payment"	Section 28-3-602
"Person entitled to enforce"	Section 28-3-301
"Presentment"	Section 28-3-501
"Reacquisition"	Section 28-3-207
"Special indorsement"	Section 28-3-205
"Teller's check"	Section 28-3-104
"Transfer of instrument"	Section 28-3-203
"Traveler's check"	Section 28-3-104
"Value"	Section 28-3-303

(3) The following definitions in other chapters apply to this chapter:

"Bank"	Section 28-4-105
"Banking day"	Section 28-4-104

"Clearing house"	Section 28-4-104
"Collecting bank"	Section 28-4-105
"Depositary bank"	Section 28-4-105
"Documentary draft"	Section 28-4-104
"Intermediary bank"	Section 28-4-105
"Item"	Section 28-4-104
"Payor bank"	Section 28-4-105
"Suspends payments"	Section 28-4-104

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.

I.C., § 28-3-103, as added by 1993, ch. 288, § 2, p. 1019; am. 2002, ch. 121, § 1, p. 338; am. 2004, ch. 43, § 31, p. 136.

Compiler's Notes. In implementing the conforming amendments to the revision of Article 1 by S.L. 2004, ch. 43, the state of Idaho did not delete the definition of "good faith" contained in subsection (1)(d) of this section, as did the uniform act. Consequently, the following comments to this section were not revised to conform to the revised uniform comments.

Section 32 of S.L. 2004, ch. 43 is compiled as § 28-4-605.

OFFICIAL COMMENT

1. Subsection (a) defines some common terms used throughout the Article that were not defined by former Article 3 and adds the definitions of "order" and "promise" found in former Section 3-102(1)(b) and (c).

2. The definition of "order" includes an instruction given by the signer to itself. The most common example of this kind of order is a cashier's check: a draft with respect to which the drawer and drawee are the same bank or branches of the same bank. Former Section 3-118(a) treated a cashier's check as a note. It stated "a draft drawn on the drawer is effective as a note." Although it is technically more correct to treat a cashier's check as a promise by the issuing bank to pay rather than an order to pay, a cashier's check is in the form of a check and it is normally referred to as a check. Thus, revised Article 3 follows banking practice in referring to a cashier's check as both a draft and a check rather than a note. Some insurance companies also follow the practice of issuing drafts in which the drawer draws on itself and makes the draft payable at or through a bank. These instruments are also treated as drafts. The obligation of the drawer of a cashier's check or other draft drawn on the drawer is stated in Section 3-412.

An order may be addressed to more than one person as drawee either jointly or in the alternative. The authorization of alternative drawees follows former Section 3-102(1)(b) and recognizes the practice of drawers, such as corporations issuing dividend checks, who for commercial convenience name a number of drawees, usually in different parts of the country. Section 3-501(b)(1) provides that presentment may be made to any one of multiple drawees. Drawees in succession are not permitted because the holder should not be required to make more than one presentment. Dishonor by any drawee named in the draft entitles the holder to rights of recourse against the drawer or indorsers.

3. The last sentence of subsection (a)(9) is intended to make it clear that an I.O.U. or other written acknowledgement of indebtedness is not a note unless there is also an undertaking to pay the obligation.

4. Subsection (a)(4) introduces a definition of good faith to apply to Articles 3 and 4. Former Articles 3 and 4 used the definition in Section 1-201(19). The definition in subsection (a)(4) is consistent with the definitions of good faith applicable to Articles 2, 2A, 4, and 4A. The definition requires not only honesty in fact but also "observance of reasonable commercial standards of fair dealing." Although fair dealing is a broad term that must be defined in context, it is clear that it is concerned with the fairness of conduct rather than the care with which an act is performed. Failure to exercise ordinary care in conducting a transaction is an entirely different concept than failure to deal fairly in conducting the transaction. Both fair dealing and ordinary care, which is defined in Section 3-103(a)(7), are to be judged in the light of reasonable commercial standards, but those standards in each case are directed to different aspects of commercial conduct.

5. Subsection (a)(7) is a definition of ordinary care which is applicable not only to Article 3 but to Article 4 as well. See Section 4-104(c). The general rule is stated in the first

sentence of subsection (a)(7) and it applies both to banks and to persons engaged in businesses other than banking. Ordinary care means observance of reasonable commercial standard of the relevant business prevailing in the area in which the person is located. The second sentence of subsection (a)(7) is a particular rule limited to the duty of a bank to examine an instrument taken by a bank for processing for collection or payment by automated means. This particular rule applies primarily to Section 4-406 and it is discussed in Comment 4 to that section. Nothing in Section 3-103(a)(7) is intended to prevent a customer from proving that the procedures followed by a bank are unreasonable, arbitrary, or unfair.

6. In subsection (c) reference is made to a new definition of "bank" in amended Article 4.

28-3-104. Negotiable instrument. — (1) Except as provided in subsections (3) and (4) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) Is payable on demand or at a definite time; and

(c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1) of this section, except paragraph (a), and otherwise falls within the definition of "check" in subsection (6) of this section is a negotiable instrument and a check.

(4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(6) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier's check or teller's check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as "money order."

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(9) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowl-

edgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(11) "Demand draft" means a writing not signed by the customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft shall contain the customer's account number and may contain any or all of the following:

(a) The customer's printed or typewritten name;

(b) A notation that the customer authorized the draft; or

(c) The statement "no signature required" or words to that effect.

"Demand draft" does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 68-301, Idaho Code.

History.

I.C., § 28-3-104, as added by 1993, ch. 288, § 2, p. 1019; am. 2002, ch. 121, § 2, p. 338.

Compiler's Notes. Section 3 of S.L. 2002, ch. 121, is compiled as § 28-3-416.

Cited in: Sirius LC v. Erickson, 144 Idaho 38, 156 P.3d 539 (2007).

28-3-108. Payable on demand or at definite time.

Cited in: Corliss v. Wenner, 135 Idaho 832, 25 P.3d 855 (Ct. App. 2001).

28-3-109. Payable to bearer or to order.

Governed by Contract Law.

Promissory note was not payable to bearer because it specifically identified the person to whom payment was to be made, the company, and even though the note was payable to an identified person, it was not payable to order because it lacked the required words of negotiability "to order." Sirius LC v. Erickson, 144 Idaho 38, 156 P.3d 539 (2007).

28-3-116. Joint and several liability — Contribution.

Liability.

No accounting of other partnership accounts was necessary before the trial court acted on a partner's claim to recover debts against the debtor since he became liable for contribution to any of the other makers of the note who paid part of the debtor's share; that liability was not intertwined with other partnership transactions. Berry v. Ostrom, 144 Idaho 458, 163 P.3d 247 (Ct. App. 2007).

28-3-118. Statute of limitations.

Analysis

Applicability.
Conversion.

Applicability.

Where a former client's disability checks were alleged to have been cashed and spent by the law firm which received the checks, the cause of action was not subject to the statute of limitations for legal malpractice under § 5-219(4), or the statute of limitations for fraud under § 5-218(4). It was an action for conversion under subsection (7) of this section; however, under any of these sections, the limitations period had run before plaintiff filed suit. McCormack v. Caldwell, — Idaho —, 266 P.3d 490 (Ct. App. 2011).

Conversion.

Where a former client alleged that his disability checks were erroneously sent to his attorney's and that the attorney or a member of his office forged the client's name, cashed

the checks, and retained the funds instead of forwarding the checks to the client, and the client then filed a legal malpractice claim against the attorney, the cause of action was not subject to the two-year statute of limitations under § 5-219(4). Despite the label attached to the claim, the claim was actually one for conversion of instruments and was, thus, subject to the three-year statute of limitations under subsection (7). McCormack v. Caldwell, — Idaho —, 266 P.3d 490 (Ct. App. 2011).

Part 2. Negotiation, Transfer, And Indorsement

28-3-203. Transfer of instrument — Rights acquired by transfer.

Holder.

To be the "holder" of a promissory note, one must possess the note and the note must be payable to the person in possession, or to bearer. If the note is not payable to the person in possession or is not indorsed, either in blank or specifically to the person in possession, then that person must show evidence of being a non-"holder" in possession with a right to enforce, including proof of the transaction by which he acquired the note. In re Wilhelm, 407 B.R. 392 (Bankr. D. Idaho 2009).

28-3-204. Indorsement.

Cited in: State v. Allen, 148 Idaho 578, 225 P.3d 1173 (Ct. App. 2009).

Part 3. Enforcement of Instruments

28-3-305. Defenses and claims in recoupment.

Collateral References. Duress, incapacity, illegality, or similar defense rendering obligation a nullity as affecting enforceability of negotiable instrument against holder in due course under UCC [rev] § 3-305(a)(1)(ii). 89 A.L.R.5th 577.

28-3-310. Accord and satisfaction by use of instrument.

Analysis

Illustrative cases.
No discharge.

Illustrative Cases.

Where plaintiffs loaned defendant $20,000, plaintiffs later took over defendant's farm repair business and agreed not to pursue the note if defendant would leave his tools and equipment on the business premises. When plaintiffs sued defendant to collect on the note, the trial court correctly held that defendant had proven a valid accord and satisfaction. Shore v. Peterson, 146 Idaho 903, 204 P.3d 1114 (2009).

No Discharge.

Check was not a valid accord and satisfaction where there was no plain statement that the check was tendered as full satisfaction of the claim, the debt appellant sought to avoid was not due at the time the check was remitted. Strother v. Strother, 136 Idaho 864, 41 P.3d 750 (Ct. App. 2002).

Part 4. Liability of Parties

28-3-415. Obligation of indorser.

Decisions Under Prior Law

Liability of Indorser.

Beneficiary was not subject to equitable subrogation because the beneficiary only signed a relative's promissory note as an accommodation party; the evidence showed that the beneficiary did not receive any consideration for signing the note. Rowan v. Riley, 139 Idaho 49, 72 P.3d 889 (2003).

28-3-416. Transfer warranties. — (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) The warrantor is a person entitled to enforce the instrument;

(b) All signatures on the instrument are authentic and authorized;

(c) The instrument has not been altered;

(d) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(f) If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

(2) A person to whom the warranties under subsection (1) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(5) If the warranty in subsection (1)(f) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

History.
I.C., § 28-3-416, as added by 1993, ch. 288, § 2, p. 1019; am. 2002, ch. 121, § 3, p. 338.

Compiler's Notes. Section 2 of S.L. 2002, ch. 121, is compiled as § 28-3-104.

28-3-417. Presentment warranties. — (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered;

(c) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section, based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28-3-404 or 28-3-405 or the drawer is precluded under section 28-3-406 or 28-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) or (4) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(7) A demand draft is a check, as provided in section 28-3-104.

(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee.

History.
I.C., § 28-3-417, as added by 1993, ch. 288, § 2, p. 1019; am. 2002, ch. 121, § 4, p. 338.

Compiler's Notes. Section 5 of S.L. 2002, ch. 121, is compiled as § 28-4-207.

28-3-420. Conversion of instrument.

Collateral References. Payee's and drawer's right of recovery, in conversion under pre-1990 UCC § 3-419, or post-1990 UCC § 3-420 [rev], for money paid on unauthorized indorsement. 91 A.L.R.5th 89.

Drawer's right of recovery against depositary bank that accepts check with missing indorsement or in violation of restrictive covenant. 104 A.L.R.5th 459.

PART 6. DISCHARGE AND PAYMENT

28-3-603. Tender of payment.

Improper Tender.

Where a third party agreed to purchase the buyers' interest in a note for an undisclosed amount up to $ 225,000, subject to certain conditions, the offer does not constitute a tender of payment under subsection (2), given that (1) the buyers never offered to pay the sellers the real amount of the debt, and (2) the offer was not unconditional Indian Springs LLC v. Indian Springs Land Inv., LLC, 147 Idaho 737, 215 P.3d 457 (2009), cert. denied, 176 L. Ed. 3d 121, 130 S. Ct. 1512 (2010).

CHAPTER 4

UNIFORM COMMERCIAL CODE — BANK DEPOSITS AND COLLECTIONS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

SECTION.

PART 2. COLLECTION OF ITEMS — DEPOSITARY AND COLLECTING BANKS

PART 6. FUNDS TRANSFERS SUBJECT MATTER AND DEFINITIONS

SECTION.

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

PART 1. GENERAL PROVISIONS AND DEFINITIONS

28-4-104. Definitions and index of definitions. — (1) In this chapter, unless the context otherwise requires:

(a) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means an association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28-8-102) or instructions for uncertificated securities (section 28-8-102), or other

certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "Draft" means a draft as defined in section 28-3-104 or an item, other than an instrument, that is an order;

(h) "Drawee" means a person ordered in a draft to make payment;

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by part 6 of chapter 4 or a credit or debit card slip;

(j) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(*l*) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Agreement for electronic presentment"	Section 28-4-110.
"Bank"	Section 28-4-105.
"Collecting bank"	Section 28-4-105.
"Depositary bank"	Section 28-4-105.
"Intermediary bank"	Section 28-4-105.
"Payor bank"	Section 28-4-105.
"Presenting bank"	Section 28-4-105.
"Presentment notice"	Section 28-4-110.

(3) "Control" as provided in section 28-7-106 and the following definitions in other chapters apply to this chapter:

"Acceptance"	Section 28-3-409.
"Alteration"	Section 28-3-407.
"Cashier's check"	Section 28-3-104.
"Certificate of deposit"	Section 28-3-104.
"Certified check"	Section 28-3-409.
"Check"	Section 28-3-104.
"Draft"	Section 28-3-104.
"Good faith"	Section 28-3-103.
"Holder in due course"	Section 28-3-302.
"Instrument"	Section 28-3-104.
"Notice of dishonor"	Section 28-3-503.
"Order"	Section 28-3-103.
"Ordinary care"	Section 28-3-103.
"Person entitled to enforce"	Section 28-3-301.
"Presentment"	Section 28-3-501.
"Promise"	Section 28-3-103.

"Prove"	Section 28-3-103.
"Teller's check"	Section 28-3-104.
"Unauthorized signature"	Section 28-3-403.

(4) In addition chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.
1967, ch. 161, § 4-104, p. 351; am. 1993, ch. 288, § 6, p. 1019; am. 1995, ch. 272, § 18, p. 873; am. 2004, ch. 42, § 18, p. 77.

Compiler's Notes. Sections 17 and 19 of S.L. 2004, ch. 42 are compiled as §§ 28-12-526 and 28-4-210, respectively.

OFFICIAL COMMENT

1. Paragraph (a)(1): "Account" is defined to include both asset accounts in which a customer has deposited money and accounts from which a customer may draw on a line of credit. The limiting factor is that the account must be in a bank.

2. Paragraph (a)(3): "Banking day." Under this definition that part of a business day when a bank is open only for limited functions, e.g., to receive deposits and cash checks, but with loan, bookkeeping and other departments closed, is not part of a banking day.

3. Paragraph (a)(4): "Clearing house." Occasionally express companies, governmental agencies and other nonbanks deal directly with a clearing house; hence the definition does not limit the term to an association of banks.

4. Paragraph (a)(5): "Customer." It is to be noted that this term includes a bank carrying an account with another bank as well as the more typical nonbank customer or depositor.

5. Paragraph (a)(6): "Documentary draft" applies even though the documents do not accompany the draft but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section 1-201 (definition of "document of title").

6. Paragraph (a)(7): "Draft" is defined in Section 3-104 as a form of instrument. Since Article 4 applies to items that may not fall within the definition of instrument, the term is defined here to include an item that is a written order to pay money, even though the item may not qualify as an instrument. The term "order" is defined in Section 3-103.

7. Paragraph (a)(8): "Drawee" is defined in Section 3-103 in terms of an Article 3 draft which is a form of instrument. Here "drawee" is defined in terms of an Article 4 draft which includes items that may not be instruments.

8. Paragraph (a)(9): "Item" is defined broadly to include an instrument, as defined in Section 3-104, as well as promises or orders that may not be within the definition of "instrument." The terms "promise" and "order" are defined in Section 3-103. A promise is a written undertaking to pay money. An order is a written instruction to pay money. But see Section 4-110(c). Since bonds and other investment securities under Article 8 may be within the term "instrument" or "promise," they are items and when handled by banks for collection are subject to this Article. See Comment 1 to Section 4-102. The functional limitation on the meaning of this term is the willingness of the banking system to handle the instrument, undertaking or instruction for collection or payment.

9. Paragraph (a)(10): "Midnight deadline." The use of this phrase is an example of the more mechanical approach used in this Article. Midnight is selected as a termination point or time limit to obtain greater uniformity and definiteness than would be possible from other possible terminating points, such as the close of the banking day or business day.

10. Paragraph (a)(11): The term "settle" has substantial importance throughout Article 4. In the American Bankers Association Bank Collection Code, in deferred posting statutes, in Federal Reserve regulations and operating circulars, in clearing-house rules, in agreements between banks and customers and in legends on deposit tickets and collection letters, there is repeated reference to "conditional" or "provisional" credits or payments. Tied in with this concept of credits or payments being in some way tentative, has been a related but somewhat different problem as to when an item is "paid" or "finally paid" either to determine the relative priority of the item as against attachments, stop-payment orders and the like or in insolvency situations. There has been extensive litigation in the various states on these problems. To a substantial extent the confusion, the litigation and even the resulting court decisions fail to take into account that in the

collection process some debits or credits are provisional or tentative and others are final and that very many debits or credits are provisional or tentative for awhile but later become final. Similarly, some cases fail to recognize that within a single bank, particularly a payor bank, each item goes through a series of processes and that in a payor bank most of these processes are preliminary to the basic act of payment or "final payment."

The term "settle" is used as a convenient term to characterize a broad variety of conditional, provisional, tentative and also final payments of items. Such a comprehensive term is needed because it is frequently difficult or unnecessary to determine whether a particular action is tentative or final or when a particular credit shifts from the tentative class to the final class. Therefore, its use throughout this Article indicates that in that particular context it is unnecessary or unwise to determine whether the debit or the credit or the payment is tentative or final. However, if qualified by the adjective "provisional" its tentative nature is intended, and if qualified by the adjective "final" its permanent nature is intended.

Examples of the various types of settlement contemplated by the term include payments in cash; the efficient but somewhat complicated process of payment through the adjustment and offsetting of balances through clearing houses; debit or credit entries in accounts between banks; the forwarding of various types of remittance instruments, sometimes to cover a particular item but more frequently to cover an entire group of items received on a particular day.

11. Paragraph (a)(12): "Suspends payments." This term is designed to afford an objective test to determine when a bank is no longer operating as a part of the banking system.

Part 2. Collection of Items — Depositary and Collecting Banks

28-4-207. Transfer warranties. — (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) The warrantor is a person entitled to enforce the item;

(b) All signatures on the item are authentic and authorized;

(c) The item has not been altered;

(d) The item is not subject to a defense or claim in recoupment (section 28-3-305(1)) of any party that can be asserted against the warrantor;

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(f) If the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 28-3-115 and 28-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of

warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(6) If the warranty in subsection (1)(f) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee, nor to any prior collecting bank.

History.
I.C., § 28-4-207, as added by 1993, ch. 288, § 22, p. 1019; am. 2002, ch. 121, § 5, p. 369.

Compiler's Notes. Section 4 of S.L. 2002, ch. 121 is compiled as § 28-3-417.

28-4-208. Presentment warranties. — (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered;

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28-3-404 or 28-3-405 or the drawer is precluded under section 28-3-406 or 28-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to

pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (2) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(7) A demand draft is a check, as provided in section 28-3-104.

(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee.

History.
I.C., § 28-4-208, as added by 1993, ch. 288, § 23, p. 1019; am. 2002, ch. 121, § 6, p. 338.

28-4-210. Security interest of collecting bank in items, accompanying documents and proceeds. — (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) If it makes an advance on or against the item.

(2) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the provisions of chapter 9, title 28, Idaho Code, but:

(a) No security agreement is necessary to make the security interest enforceable (section 28-9-203(b)(3)(A));

(b) No filing is required to perfect the security interest; and

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History.
1967, ch. 161, § 4-208, p. 351; am. and redesig. 1993, ch. 288, § 25, p. 1019; am. 2001, ch. 208, § 10, p. 704; am. 2004, ch. 42, § 19, p. 77.

Compiler's Notes. Sections 18 and 20 of S.L. 2004, ch. 42 are compiled as §§ 28-4-104 and 28-8-103, respectively.

Part 4. Relationship Between Payor Bank and Its Customer

28-4-401. When bank may charge customer's account.

Analysis

Indorsement.
—Authorized.

Indorsement.

—Authorized.
Despite a bank's contention that §§ 26-717, 28-4-401, and 68-309, taken together dictated that only the owner of a bank account may assert a legally cognizable interest in a deposit account, the statutes did not resolve the rights of the account owner in relation to the bankruptcy debtor, the true owner of the funds deposited in that account; thus the use of account funds to pay a debt of the account owner was a transfer of the debtor's property which was avoidable in bankruptcy. Hopkins v. D.L. Evans Bank (In re Fox Bean Co.), 287 Bankr. 270 (Bankr. D. Idaho 2002).

Part 6. Funds Transfers Subject Matter and Definitions

28-4-601. Short title.

Collateral References. Construction and application to immediate parties of Uniform Commercial Code Article 4A governing funds transfers. 62 A.L.R. 6th 1.

28-4-602. Subject matter.

Collateral References. Construction and application to immediate parties of Uniform Commercial Code Article 4A governing funds transfers. 62 A.L.R. 6th 1.

28-4-605. Other definitions. — (1) In this part:
(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this part.
(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 28-1-201(b)(8)).

(2) Other definitions applying to this part and the sections in which they appear are:

"Acceptance"	Section 28-4-617
"Beneficiary"	Section 28-4-603
"Beneficiary's bank"	Section 28-4-603
"Executed"	Section 28-4-621
"Execution date"	Section 28-4-621
"Funds transfer"	Section 28-4-604
"Funds-transfer system rule"	Section 28-4-632
"Intermediary bank"	Section 28-4-604
"Originator"	Section 28-4-604
"Originator's bank"	Section 28-4-604
"Payment by beneficiary's bank to beneficiary"	Section 28-4-630
"Payment by originator to beneficiary"	Section 28-4-631
"Payment by sender to receiving bank"	Section 28-4-628
"Payment date"	Section 28-4-626
"Payment order"	Section 28-4-603
"Receiving bank"	Section 28-4-603
"Security procedure"	Section 28-4-609
"Sender"	Section 28-4-603

(3) The following definitions in article 4 apply to this part:

"Clearing house"	Section 28-4-104
"Item"	Section 28-4-104
"Suspends payments"	Section 28-4-104

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this part.

History. I.C., § 28-4-605, as added by 1991, ch. 135, § 1, p. 295; am. 2004, ch. 43, § 32, p. 136.

Compiler's Notes. Section 31 of S.L. 2004, ch. 43 is compiled as § 28-3-103.

28-4-606. Time payment order is received. — (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 28-1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders.

If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this part refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this part.

History.
I.C., § 28-4-606, as added by 1991, ch. 135, § 1, p. 295; am. 2004, ch. 43, § 33, p. 136.

Compiler's Notes. Section 34 of S.L. 2004, ch. 43 is compiled as § 28-4-612.

OFFICIAL COMMENT

The time that a payment order is received by a receiving bank usually defines the payment date or the execution date of a payment order. Section 4A-401 [§ 28-4-626] and Section 4A-301 [§ 28-4-621]. The time of receipt of a payment order, or communication cancelling or amending a payment order is defined in subsection (a) [(1)] by reference to the rules stated in Section 1-202. Thus, time of receipt is determined by the same rules that determine when a notice is received. Time of receipt, however, may be altered by a cut-off time.

28-4-608. Exclusion of consumer transactions governed by federal law.

Collateral References. Validity, construction, and application of Electronic Fund Transfer Act (EFTA), and regulations promulgated thereunder, 15 USCS §§ 1693 et seq. 46 A.L.R. Fed. 2d 473.

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

28-4-612. Refund of payment and duty of customer to report with respect to unauthorized payment order. — (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is:

(1) Not authorized and not effective as the order of the customer under section 28-4-610, or

(2) Not enforceable, in whole or in part, against the customer under section 28-4-611, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the

customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in section 28-1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

History.
I.C., § 28-4-612, as added by 1991, ch. 135, § 1, p. 295; am. 2004, ch. 43, § 34, p. 136.

Compiler's Notes. Sections 33 and 35 of S.L. 2004, ch. 43 are compiled as §§ 28-4-606 and 28-5-103, respectively.

CHAPTER 5

UNIFORM COMMERCIAL CODE — LETTERS OF CREDIT

SECTION.

28-5-103. Scope. — (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (2), sections 28-5-102(1)(i) and (1)(j), 28-5-106(4) and 28-5-114(4), and except to the extent prohibited in sections 28-1-302 and 28-5-117(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

History.
I.C., § 28-5-103, as added by 1996, ch. 7, § 2, p. 9; am. 2004, ch. 43, § 35, p. 136.

Compiler's Notes. Sections 34 and 36 of S.L. 2004, ch. 43 are compiled as §§ 28-4-612 and 28-12-103, respectively.

OFFICIAL COMMENT

1. Sections 5-102(a)(10) and 5-103 are the principal limits on the scope of Article 5. Many undertakings in commerce and contract are similar, but not identical to the letter of credit. Principal among those are "secondary," "accessory," or "suretyship" guarantees. Although the word "guarantee" is sometimes used to describe an independent obligation like that of the issuer of a letter of credit (most often in the case of European bank undertakings but occasionally in the case of undertakings of American banks), in the United States the word "guarantee" is more typically used to describe a suretyship transaction in which the "guarantor" is only secondarily liable and has the right to assert the underlying debtor's

defenses. This article does not apply to secondary or accessory guarantees and it is important to recognize the distinction between letters of credit and those guarantees. It is often a defense to a secondary or accessory guarantor's liability that the underlying debt has been discharged or that the debtor has other defenses to the underlying liability. In letter of credit law, on the other hand, the dependence principle recognized throughout article 5 states that the issuer's liability is independent of the underlying obligation. That the beneficiary may have breached the underlying contract and thus have given a good defense on that contract to the applicant against the beneficiary is no defense for the issuer's refusal to honor. Only staunch recognition of this principle by the issuers and the courts will give letters of credit the continuing vitality that arises from the certainty and speed of payment under letters of credit. To that end, it is important that the law not carry into letter of credit transactions rules that properly apply only to secondary guarantees or to other forms of engagement.

2. Like all of the provisions of the Uniform Commercial Code, Article 5 is supplemented by Section 1-103 and, through it, by many rules of statutory and common law. Because this article is quite short and has no rules on many issues that will affect liability with respect to a letter of credit transaction, law beyond Article 5 will often determine rights and liabilities in letter of credit transactions. Even within letter of credit law, the article is far from comprehensive; it deals only with "certain" rights of the parties. Particularly with respect to the standards of performance that are set out in Section 5-108, it is appropriate for the parties and the courts to turn to customs and practice such as the Uniform Customs and Practice for Documentary Credits, currently published by the International Chamber of Commerce as I.C.C. PUb. No. 500 (hereafter UCP). Many letters of credit specifically adopt the UCP as applicable to the particular transaction. Where the UCP are adopted but conflict with Article 5 and except where variation is prohibited, the UCP terms are permissible contractual modifications under Sections 1-302 and 5-103(c). See Section 5-116(c). Normally Article 5 should not be considered to conflict with practice except when a rule explicitly stated in the UCP or other practice is different from a rule explicitly stated in Article 5.

Except by choosing the law of a jurisdiction that has not adopted the Uniform Commercial Code, it is not possible entirely to escape the Uniform Commercial Code. Since incorporation of the UCP avoids only "conflicting" Article 5 rules, parties who do not wish to be governed by the nonconflicting provisions of Article 5 must normally either adopt the law of a jurisdiction other than a State of the United States or state explicitly the rule that is to govern. When rules of custom and practice are incorporated by reference, they are considered to be explicit terms of the agreement or undertaking.

Neither the obligation of an issuer under section 5-108 nor that of an adviser under Section 5-107 is an obligation of the kind that is invariable under Section 1-102(3). Section 5-103(c) and Comment 1 to Section 5-108 make it clear that the applicant and the issuer may agree to almost any provision establishing the obligations of the issuer to the applicant. The last sentence of subsection (c) limits the power of the issuer to achieve that result by a nonnegotiated disclaimer or limitation of remedy.

What the issuer could achieve by an explicit agreement with its applicant or by a term that explicitly defines its duty, it cannot accomplish by a general disclaimer. The restriction on disclaimers in the last sentence of subsection (c) is based more on procedural than on substantive unfairness. Where, for example, the reimbursement agreement provides explicitly that the issuer need not examine any documents, the applicant understands the risk it has undertaken. A term in a reimbursement agreement which states generally that an issuer will not be liable unless it has acted in "bad faith" or committed "gross negligence" is ineffective under Section 5-103(c). On the other hand, less general terms such as terms that permit issuer reliance on an oral or electronic message believed in good faith to have been received from the applicant or terms that entitle an issuer to reimbursement when it honors a "substantially" though not "strictly" complying presentation, are effective. In each case the question is whether the disclaimer or limitation is sufficiently clear and explicit in reallocating a liability or risk that is allocated differently under a variable Article 5 provision.

Of course, no term in a letter of credit, whether incorporated by reference to practice rules or stated specifically, can free an issuer from a conflicting contractual obligation to its applicant. If, for example, an issuer promised its applicant that it would pay only against an inspection certificate of a particular company but failed to require such a certificate in its letter of credit or made the requirement only a nondocumentary condition that had been disregarded, the issuer might be obliged to pay the beneficiary even though its payment might violate its contract with its applicant.

3. Parties should generally avoid modifying the definitions in Section 5-102. The effect of such an agreement is almost inevitably unclear. To say that something is a "guarantee" in the typical domestic transaction is to say that the parties intent that particular

legal rules apply to it. By acknowledging that something is a guarantee, but asserting that it is to be treated as a "letter of credit," the parties leave a court uncertain about where the rules on guarantees stop and those concerning letters of credit begin.

4. Section 5-102(2) and (3) of Article 5 are omitted as unneeded; the omission does not change the law.

CHAPTER 7

DOCUMENTS OF TITLE

Part 1. General

Part 2. Warehouse Receipts — Special Provisions

Part 3. Bills of Lading — Special Provisions

Part 4. Warehouse Receipts and Bills of Lading — General Obligations

Part 5. Warehouse Receipts and Bills of Lading — Negotiation and Transfer

Part 6. Warehouse Receipts and Bills of Lading — Miscellaneous Provisions

Part 7. Miscellaneous Provisions

Part 1. General

28-7-101. Short title. — This chapter shall be known and may be cited as "Uniform Commercial Code — Documents of Title."

History.
I.C., § 28-7-101, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-101, which comprised 1967, ch. 161, § 7-101, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-3-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-101.

Changes: Revised for style only.

This Article is a revision of the 1962 Official Text with Comments as amended since 1962. The 1962 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and embraced the provisions of the Uniform Sales Act relating to negotiation of documents of title.

This Article does not contain the substantive criminal provisions found in the Uniform Warehouse Receipts and Bills of Lading Acts. These criminal provisions are inappropriate to a Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating to frauds. This revision deletes the former Section 7-105 that provided that courts could apply a rule from Parts 2 and 3 by analogy to a situation not explicitly covered in the provisions on warehouse receipts or bills of lading when it was appropriate. This is, of course, an unexceptional proposition and need not be stated explicitly in the statute. Thus former Section 7-105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends upon the facts of each case.

The Article does not attempt to define the tort liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. For important classes of bailees, liabilities in case of loss, damages or destruction, as well as other legal questions associated with particular documents of title, are governed by federal statutes, international treaties, and in some cases regulatory state laws, which supersede the provisions of this Article in case of inconsistency. See Section 7-103.

28-7-102. Definitions and index of definitions. — (a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or

employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) "Contract for sale," section 28-2-106.

(2) "Lessee in ordinary course," section 28-12-103.

(3) "Receipt" of goods, section 28-2-103.

(c) In addition, chapter 1, title 28, Idaho Code, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.

I.C., § 28-7-102, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-102, which comprised 1967, ch. 161, § 7-102, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-102.

Changes: New definitions of "carrier," "good faith," "record," "sign," and "shipper." Other definitions revised to accommodate electronic mediums.

Purposes:

1. "Bailee" is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this Article which declare the "bailee's" obligations. (See definition of "Issuer" in this section and Sections 7-203 and 7-301 on liability in case of non-receipt.) A "carrier" is one type of bailee and is defined as a person that issues a bill of lading. A "shipper" is a person who enters into the contract of transportation with the carrier. The definitions of "bailee," "consignee," "consignor," "goods", and "issuer", are unchanged in substance from prior law. "Document of title" is defined in Article 1, and may be in either tangible or electronic form.

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) does not require that the issuing warehouse be "lawfully engaged" in business or for profit. The warehouse's compliance with applicable state regulations such as the filing of a bond has no bearing on

the substantive issues dealt with in this Article. Certainly the issuer's violations of law should not diminish its responsibility on documents the issuer has put in commercial circulation. But it is still essential that the business be storing goods "for hire" (Section 1-201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of "document of title" in Section 1-201.

4. The obligation of good faith imposed by this Article and by Article 1, Section 1-304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of "record" and "sign" are included to facilitate electronic mediums. See Comment 9 to Section 9-102 discussing "record" and the comment to amended Section 2-103 discussing "sign."

6. "Person entitled under the document" is moved from former Section 7-403.

7. These definitions apply in this Article unless the context otherwise requires. The "context" is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. The definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. See comment to Section 1-201.

Cross references:

Point 1: Sections 1-201, 7-203 and 7-301.
Point 2: Sections 1-201 and 7-203.
Point 3: Section 1-201.
Point 4: Section 1-304.
Point 5: Sections 9-102 and 2-103.
See general comment to document of title in Section 1-201.

Definitional cross references:

"Bill of lading". Section 1-201.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Person". Section 1-201.
"Purchase". Section 1-201.
"Receipt of goods". Section 2-103.
"Right". Section 1-201.
"Warehouse receipt". Section 1-201.

28-7-103. Relation of chapter to treaty or statute. — (a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

(d) To the extent there is a conflict between the uniform electronic transactions act, chapter 50, title 28, Idaho Code, and this chapter, this chapter governs.

History.

I.C., § 28-7-103, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-103, which comprised 1967, ch. 161, § 7-103, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Former Sections 7-103 and 10-104.

Changes: Deletion of references to tariffs and classifications; incorporation of former Section 10-104 into subsection (b), provide for intersection with federal and state law governing electronic transactions.

Purposes:

1. To make clear what would of course be true without the Section, that applicable federal law is paramount.

2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the Article and are controlling on the matters which they cover unless preempted by federal law. The reference in former Section 7-103 to tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate in the modern era of diminished regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this Article recognizes as controlling. Permissive tariffs or classifications would not displace the provisions of this act, pursuant to this section, but may be given effect through the ability of parties to incorporate those terms by reference into their agreement.

3. The document of title provisions of this act supplement the federal law and regulatory state law governing bailees. This Article focuses on the commercial importance and usage of documents of title. State ex rel Public Service Commission v. Gunkelman & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this Article and the conforming amendments to other articles of the Uniform Commercial Code promulgated as part of the revision of this Article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to Revised Article 1, Section 1-108.

5. Subsection (d) makes clear that once this Article is in effect, its provisions regarding electronic commerce and regarding electronic documents of title control in the event there is a conflict with the provisions of the Uniform Electronic Transactions Act or other applicable state law governing electronic transactions.

Cross references:

Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, 7-403.

Definitional cross reference:

"Bill of lading". Section 1-201.

28-7-104. Negotiable and nonnegotiable document of title. — (a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

History.

I.C., § 28-7-104, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-104, which comprised 1967, ch. 161, § 7-104, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-104.

Changes: Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is revised for style and medium neutrality. Subsection (c) is new.

Purposes:

1. This Article deals with a class of commercial paper representing commodities in storage or transportation. This "commodity paper" is to be distinguished from what might be called "money paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and "investment paper" dealt with in the Article of this Act on Investment Securities (Article 8). The class of "commodity paper" is designated "document of title" following the terminology of the Uniform Sales Act Section 76. Section 1-201. The distinctions between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the Article, in that the holder of negotiable documents may acquire more rights than its transferor had (See Section 7-502). The former Section 7-104, which provided that a document of title was negotiable if it runs to a named person or assigns if such designation was recognized in overseas trade, has been deleted as not necessary in light of current commercial practice.

A document of title is negotiable only if it satisfies this section. "Deliverable on proper indorsement and surrender of this receipt" will not render a document negotiable. Bailees often include such provisions as a means of insuring return of nonnegotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person. Either tangible or electronic documents of title may be negotiable if the document meets the requirement of this section.

2. Subsection (c) is derived from Section 3-104(d). Prior to issuance of the document of title, an issuer may stamp or otherwise provide by a notation on the document that it is nonnegotiable even if the document would otherwise comply with the requirement of subsection (a). Once issued as a negotiable document of title, the document cannot be changed from a negotiable document to a nonnegotiable document. A document of title that is nonnegotiable cannot be made negotiable by stamping or providing a notation that the document is negotiable. The only way to make a document of title negotiable is to comply with subsection (a). A negotiable document of title may fail to be duly negotiated if the negotiation does not comply with the requirements for "due negotiation" stated in Section 7-501.

Cross references: Sections 7-501 and 7-502.

Definitional cross references:
"Bearer". Section 1-201.
"Bill of lading". Section 1-201.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Person". Section 1-201.
"Sign". Section 7-102.
"Warehouse receipt". Section 1-201.

28-7-105. Reissuance in alternative medium. — (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title,

the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

History.
I.C., § 28-7-105, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-105, which comprised 1965, ch. 161, § 7-105, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on the Carriage of Goods by Sea Transport Law.

Purposes:

1. This section allows for documents of title issued in one medium to be reissued in another medium. This section applies to both negotiable and nonnegotiable documents. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a document of title imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.

2. The request must be made to the issuer by the person entitled to enforce the document of title (Section 7-102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document must have a notation that it has been issued as a substitute for the original document. These minimum requirements must be met in order to give the substitute document effect and validity. If these minimum requirements are not met for issuance of a substitute document of title, the original document of title continues to be effective and valid. Section 7-402. However, if the minimum requirements imposed by this section are met, in addition to any other requirements that the issuer may impose, the substitute document will be the document that is effective and valid.

3. To protect parties who subsequently take the substitute document of title, the person who procured issuance of the substitute document warrants that it was a person entitled under the original document at the time it surrendered possession or control of the original document to the issuer. This warranty is modeled after the warranty found in Section 4-209.

Cross References: Sections 7-106, 7-402 and 7-601.

Definitional Cross Reference: "Person entitled to enforce," Section 7-102.

28-7-106. Control of electronic document of title. — (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subsections (b)(4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

History.
I.C., § 28-7-106, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Uniform Electronic Transactions Act Section 16.

Purposes:

1. The section defines "control" for electronic documents of title and derives its rules from the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA § 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

2. Control of an electronic document of title substitutes for the concept of indorsement and possession in the tangible document of title context. See Section 7-501. A person with a tangible document of title delivers the document by voluntarily transferring possession and a person with an electronic document of title delivers the document by voluntarily transferring control. (Delivery is defined in Section 1-201).

3. Subsection (a) sets forth the general rule that the "system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." The key to having a system that satisfies this test is that identity of *the* person to which the document was issued or transferred must be reliably established. Of great importance to the functioning of the control concept is to be able to demonstrate, at any point in time, *the person* entitled under the electronic document. For example, a carrier may issue an electronic bill of lading by having the required information in a database that is encrypted and accessible by virtue of a password. If the computer system in which the required information is maintained identifies the person as *the* person to which the electronic bill of lading was issued or transferred, that person has control of the electronic document of title. That identification may be by virtue of passwords or other encryption methods. Registry systems may satisfy this test. For example, see the electronic warehouse receipt system established pursuant to 7 C.F.R. Part 735. This Article leaves to the market place the development of sufficient technologies and business practices that will meet the test.

An electronic document of title is evidenced by a record consisting of information stored in

an electronic medium. Section 1-201. For example, a record in a computer database could be an electronic document of title assuming that it otherwise meets the definition of document of title. To the extent that third parties wish to deal in paper mediums, Section 7-105 provides a mechanism for exiting the electronic environment by having the issuer reissue the document of title in a tangible medium. Thus if a person entitled to enforce an electronic document of title causes the information in the record to be printed onto paper without the issuer's involvement in issuing the document of title pursuant to Section 7-105, that paper is not a document of title.

4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a). The test in subsection (b) is also used in Section 9-105 although Section 9-105 does not include the general test of subsection (a). Under subsection (b), at any point in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved or copied from its original location. To the extent that backup systems exist which result in multiple copies, the key to this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable.

Parties may not by contract provide that control exists. The test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.

5. Article 7 has historically provided for rights under documents of title and rights of transferees of documents of title as those rights relate to the goods covered by the document. Third parties may possess or have control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the document by those third parties may create serious issues, this Article has never dealt with those issues as it relates to tangible documents of title, preferring to leave those issues to the law of contracts, agency and tort law. In the electronic document of title regime, third party registry systems are just beginning to develop. It is very difficult to write rules regulating those third parties without some definitive sense of how the third party registry systems will be structured. Systems that are evolving to date tend to be "closed" systems in which all participants must sign on to the master agreement which provides for rights as against the registry system as well as rights among the members. In those closed systems, the document of title never leaves the system so the parties rely upon the master agreement as to rights against the registry for its failures in dealing with the document. This article contemplates that those "closed" systems will continue to evolve and that the control mechanism in this statute provides a method for the participants in the closed system to achieve the benefits of obtaining control allowed by this article.

This article also contemplates that parties will evolve open systems where parties need not be subject to a master agreement. In an open system a party that is expecting to obtain rights through an electronic document may not be a party to the master agreement. To the extent that open systems evolve by use of the control concept contained in this section, the law of contracts, agency, and torts as it applies to the registry's misfeasance or negligence concerning the transfer of control of the electronic document will allocate the risks and liabilities of the parties as that other law now does so for third parties who hold tangible documents and fail to deliver the documents.

Cross References: Sections 7-105 and 7-501.

Definitional cross references:

"Delivery". Section 1-201.

"Document of title". Section 1-201.

Part 2. Warehouse Receipts — Special Provisions

28-7-201. Person that may issue a warehouse receipt — Storage under bond. — (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

History.
I.C., § 28-7-201, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-201, which comprised 1967, ch. 161, § 7-201, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-201.

Changes: Update for style only.

Purposes:

It is not intended by re-enactment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7-103. Compare Section 7-401(4) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 51.

Cross references:

Sections 7-103 and 7-401.

Definitional cross references:

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

28-7-202. Form of warehouse receipt — Effect of omission. — (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the uniform commercial code and do not impair its obligation of delivery under section 28-7-403 or its duty of care under section 28-7-204. Any contrary provision is ineffective.

History.
I.C., § 28-7-202, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-202, which comprised 1967, ch. 161, § 7-202, p. 351, was repealed by 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-202.

Changes: Language is updated to accommodate electronic commerce and to reflect modern style.

Purposes:

1. This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of "warehouse receipt" in Article 1. Thus the title has been changed to eliminate the phrase "essential terms" as provided in prior law. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term's omission has a right as against the warehouse for harm caused by the omission. Cases, such as In re Celotex Corp., 134 B.R. 993 (Bankr. M.D. Fla. 1991), that held that in order to have a valid warehouse receipt all of the terms listed in this section must be contained in the receipt, are disapproved.

2. The unique identification code referred to in subsection (b)(3) can include any combination of letters, number, signs, and/or symbols that provide a unique identification. Whether an electronic or tangible warehouse receipt contains a signature will be resolved with the definition of sign in Section 7-102.

Cross references:
Sections 7-103 and 7-401.

Definitional cross references:
"Bearer". Section 1-201.
"Delivery". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Security interest". Section 1-201.
"Sign". Section 7-102.
"Term". Section 1-201.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

28-7-203. Liability for nonreceipt or misdescription. — A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

History.
I.C., § 28-7-203, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-203, which comprised 1967, ch. 161, § 7-203, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-203.

Changes: Changes to this section are for style only.

Purpose:

This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of its principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross reference: Section 7-301.

Definitional cross references:

"Conspicuous". Section 1-201.
"Document of title". Section 1-201.
"Goods". Section 7-102.
"Good Faith". Section 1-201 [7-102].
"Issuer". Section 7-102.
"Notice". Section 1-202.
"Party". Section 1-201.
"Purchaser". Section 1-201.
"Receipt of goods". Section 2-103.
"Value". Section 1-204.

28-7-204. Duty of care — Contractual limitation of warehouse's liability. — (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

History.

I.C., § 28-7-204, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-204, which comprised 1967, ch. 161, § 7-204, p. 351; am. 1982, ch. 24, § 2, p. 31, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-204.

Changes: Updated to reflect modern, standard commercial practices.

Purposes of changes:

1. Subsection (a) continues the rule without change from former Section 7-204 on the warehouse's obligation to exercise reasonable care.

2. Former Section 7-204(2) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement without the term constituting an impermissible disclaimer of the obligation of reasonable care. The parties cannot disclaim by contract the warehouse's obligation of care. Section 1-302. For example, limitations based upon per unit of weight, per package, per occurrence, or per receipt as well as limitations based upon a multiple of the storage

rate may be commercially appropriate. As subsection (d) makes clear, the states or the federal government may supplement this section with more rigid standards of responsibility for some or all bailees.

3. Former Section 7-204(2) also provided that an increased rate can not be charged if contrary to a tariff. That language has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section allowing an increased rate. The provisions of a non-mandatory tariff may be incorporated by reference in the parties' agreement. See Comment 2 to Section 7-103. Subsection (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. See Adams v. Ryan & Christie Storage, Inc., 563 F. Supp. 409 (E.D. Pa. 1983) aff'd 725 F.2d 666 (3rd Cir. 1983). Cases such as I.C.C. Metals Inc. v. Municipal Warehouse Co., 409 N.E. 2d 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption of conversion to the warehouse's own use are disapproved. "Conversion to its own use" is narrower than the idea of conversion generally. Cases such as Lipman v. Peterson, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

5. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an on-going relationship. The storage agreement may allow for the movement of goods into and out of a warehouse without the necessity of issuing or amending a warehouse receipt upon each entry or exit of goods from the warehouse.

Cross references: Sections 1-302, 7-103, 7-309 and 7-403.

Definitional cross references:
"Goods". Section 7-102.
"Reasonable time". Section 1-204.
"Sign". Section 7-102.
"Term". Section 1-201.
"Value". Section 1-204.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

28-7-205. Title under warehouse receipt defeated in certain cases. — A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

History.
I.C., § 28-7-205, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-205, which comprised 1967, ch. 161, § 7-205, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-205.

Changes: Changes for style only.

Purposes:

1. The typical case covered by this section is that of the warehouse-dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C. Section 714p enacted in 1955.

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in Section 7-501. The definition of "buyer in ordinary course" is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary

transfer of possession of the fungible goods to the buyer. See amended Section 2-103. This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

Cross references: Sections 2-403 and 9-320.

Definitional cross references:

"Buyer in ordinary course of business". Section 1-201.
"Delivery". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible" goods. Section 1-201.
"Goods". Section 7-102.
"Value". Section 1-204.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

28-7-206. Termination of storage at warehouse's option. — (a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty (30) days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 28-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and section 28-7-210, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

History.
I.C., § 28-7-206, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-206, which comprised 1967, ch. 161, § 7-206, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-206.

Changes: Changes for style.

Purposes:

1. This section provides for three situations in which the warehouse may terminate storage for reasons other than enforcement of its lien as permitted by Section 7-210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse's power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

2. In permitting expeditious disposition of perishable and hazardous goods the pre-Code Uniform Warehouse Receipts Act, Section 34, made no distinction between cases where the warehouse knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between the two situations. The reason of this section should apply if the goods become hazardous during the course of storage. The process for selling the goods described in Section 7-210 governs the sale of goods under this section except as provided in subsections (b) and (c) for the situations described in those subsections respectively.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse's security.

4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of some states forbidding warehouses from discriminating among customers. Nor does the section relieve the warehouse of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Section 7-103.

Cross references:

Sections 7-103 and 7-403.

Definitional cross references:

"Delivery". Section 1-201.
"Document of title". Section 1-102.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Notice". Section 1-202.
"Notification". Section 1-202.
"Person". Section 1-201.
"Reasonable time". Section 1-205.
"Value". Section 1-204.
"Warehouse". Section 7-102.

28-7-207. Goods must be kept separate — Fungible goods. — (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

History.

I.C., § 28-7-207, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-207, which comprised 1967, ch. 161, § 7-207, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-207.

Changes: Changes for style only.

Purpose:

No change of substance is made from former Section 7-207. Holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional cross references:

"Delivery". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible" goods. Section 1-201.
"Goods". Section 7-102.
"Holder". Section 1-201.
"Person". Section 1-201.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

28-7-208. Altered warehouse receipts. — If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

History.

I.C., § 28-7-208, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-208, which comprised 1967, ch. 161, § 7-208, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-208.

Changes: To accommodate electronic documents of title.

Purposes:

1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. See Section 7-106. Thus the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents.

2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. The rule stated in the second sentence applies to both tangible and electronic warehouse receipts.

Definitional cross references:

"Good faith". Section 1-201 [7-102].
"Issuer". Section 7-102.
"Notice". Section 1-202.
"Purchaser". Section 1-201.
"Value". Section 1-204.
"Warehouse receipt". Section 1-201.

28-7-209. Lien of warehouse. — (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever

deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by chapter 9, title 28, Idaho Code.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 28-7-403; or

(C) Power of disposition under section 28-2-403, 28-12-304(2), 28-12-305(2), 28-9-320 or 28-9-321(c), or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

History.

I.C., § 28-7-209, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-209, which comprised 1967, ch. 161, § 7-209, p. 351; am. S.L. 1973, ch. 174, § p. 383, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Sections 7-209 and 7-503.

Changes: Expanded to recognize warehouse lien when a warehouse receipt is not issued but goods are covered by a storage agreement.

Purposes:

1. Subsection (a) defines the warehouse's

statutory lien. Other than allowing a warehouse to claim a lien under this section when there is a storage agreement and not a warehouse receipt, this section remains unchanged in substance from former Section 7-209(1). Under the first sentence, a specific lien attaches automatically without express notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement. That lien is limited to the usual charges arising out of a storage transaction.

Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the charges for storage and the other expenses of those goods. The warehouse may enforce its lien under Section 7-210 as against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important to the warehouse's rights as against the bailor.

Under the second sentence, by notation on the receipt or storage agreement, the lien can be made a general lien extending to like charges in relation to other goods. Both the specific lien and general lien are as to goods in the possession of the warehouse and extend to proceeds from the goods as long as the proceeds are in the possession of the warehouse. The same rules apply whether the receipt is negotiable or non-negotiable.

Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of that receipt by due negotiation is limited to the amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the specific goods covered by the receipt for storage after the date of the receipt.

Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the warehouse may enforce its lien against the bailor's goods stored in the warehouse as against the person to whom the negotiable warehouse receipt has been duly negotiated. Section 7-502. That lien is limited to the charges or rates specified in the receipt or a reasonable charge for storage as stated in the last sentence of subsection (a).

Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is not enforceable as against the person to whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien, the warehouse's general lien is not enforceable as against the person to whom the negotiable document has been duly negotiated. However, the warehouse lien for charges and expenses related to storage of lot A goods is still enforceable as against the person to whom the receipt was duly negotiated.

Example 5: Same facts as Examples 2 and 4 except the warehouse had stated on the negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot B). Under the last sentence of subsection (a), the general lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is enforceable as against the person to whom the receipt has been duly negotiated.

2. Subsection (b) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage or transportation, as where the bailee assumes the role of financier or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. Compare Sections 9-109 and 9-333. It is governed in all respects by Article 9, except that subsection (b) requires that the receipt specify a maximum amount and limits the security interest to the amount specified. A warehouse could also take a security interest to secure its charges for storage and the other expenses listed in subsection (a) to protect these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses possession of the goods as provided in subsection (e).

Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse receipt that states that the warehouse is

taking a security interest in the bailed goods for charges of storage, expenses, for money advanced, for manufacturing services rendered, and all other obligations that the bailor may owe the warehouse. That is a security interest covered in all respects by Article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its statutory possessory lien to protect its charges for storage and the other expenses related to storage. For those storage charges covered by the statutory possessory lien, the warehouse is not required to use a security interest under subsection (b).

3. Subsections (a) and (b) validate the lien and security interest "against the bailor." Under basic principles of derivative rights as provided in Section 7-504, the warehouse lien is also valid as against parties who obtain their rights from the bailor except as otherwise provided in subsection (a), third sentence, or subsection (c).

Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt that also claims a general lien in other goods stored with the warehouse. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of those goods is effective against Buyer for both the specific lien and the general lien. Section 7-504.

Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the goods while the goods are in the warehouse's possession to Secured Party (SP) who properly perfects a security interest in the goods. See Revised 9-312(d). The warehouse lien is superior in priority over SP's security interest. See Revised 9-203(b)(2) (debtor can grant a security interest to the extent of debtor's rights in the collateral).

Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the negotiable document to SP. SP properly perfects its interest in the negotiable document by taking possession through a "due negotiation." Revised 9-312(c). SP's security interest is subordinate to the warehouse lien. Section 7-209(a), third sentence. Given that bailor's rights are subject to the warehouse lien, the bailor cannot grant to the SP greater rights than the bailor has under Section 9-203(b)(2), perfection of the security interest in the negotiable document and the goods covered by the document through SP's filing of a financing statement should not give a different result.

As against third parties who have interests in the goods prior to the storage with the warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to validate the lien or security interest of the warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be protected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under the second sentence of subsection (c). The language of Section 7-503 is brought into subsection (c) for purposes of clarity. The comments to Section 7-503 are helpful in interpreting delivery, entrustment or acquiescence.

Where the third party is the holder of a security interest, obtained prior to the issuance of a negotiable warehouse receipt, the rights of the warehouse depend on the priority given to a hypothetical bona fide pledgee by Article 9, particularly Section 9-322. Thus the special priority granted to statutory liens by Section 9-333 does not apply to liens under subsection (a) of this section, since subsection (c), second sentence, "expressly provides otherwise" within the meaning of Section 9-333.

As to household goods, however, subsection (d) makes the warehouse's lien "for charges and expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouse to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.

Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges for storage or other expenses arises under subsection (a). The warehouse lien is not effective as against SP unless SP entrusted the goods to the bailor with actual or apparent authority to ship, store, or sell the goods or with power of disposition under subsection (c)(1) or acquiesced in the bailor's procurement of a document of title under subsection (c)(2). This result obtains whether the receipt is negotiable or nonnegotiable.

Example 11: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner of the goods. Subsection (d).

4. As under previous law, this section creates a statutory possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods. The warehouse loses its lien if it loses possession of the goods or the proceeds. Subsection (e).

5. Where goods have been stored under a nonnegotiable warehouse receipt and are sold by the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The obligations of the seller of the goods in this situation are set forth in Section 2-503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of the buyer's right to possession of the goods. If a new receipt is requested, such an acknowledgment can be withheld until storage charges have been paid or provided for. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (a), continues valid unless the bailee gives it up. See Section 7-403. But once a new receipt is issued to the buyer, the buyer becomes "the person on whose account the goods are held" under the second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may preserve the general lien in such a case either by an arrangement by which the buyer "is liable for" such charges, or by reserving a security interest under subsection (b).

6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a storage agreement or a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 7-204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in Section 7-202 does not deprive the warehouse of its lien that arises under subsection (a). See the comment to Section 7-202.

Cross references:

Point 1: Sections 7-501 and 7-502.

Point 2: Sections 9-109 and 9-333.

Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312 and 9-322.

Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, and 9-401.

Point 5: Sections 2-503 and 7-403.

Point 6: Sections 7-202 and 7-204.

Definitional cross references:

"Delivery". Section 1-201.

"Document of Title". Section 1-201.

"Goods". Section 7-102.

"Money". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Right". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

28-7-209A. Liens of agricultural commodity warehousemen. [Repealed.]

Compiler's Notes. This section, which comprised 1992, ch. 97, § 2, p. 311; am. 2001, ch. 208, § 12, p. 704, was repealed by S.L. 2004, ch. 42, § 1.

28-7-210. Enforcement of warehouse's lien. — (a) Except as otherwise provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells

at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not fewer than six (6) conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

History.
I.C., § 28-7-210, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-210, which comprised 1967, ch. 161, § 7-210, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-210.

Changes: Update to accommodate electronic commerce and for style.

Purposes:

1. Subsection (a) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are retained in subsection (b) with one change. The requirement in former Section 7-210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notification may be sent by any reasonable means as provided in Section 1-202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices and remain unchanged from former Section 7-210.

3. A warehouse may have recourse to an interpleader action in appropriate circumstances. See Section 7-603.

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the security interest simultaneously by using the procedures of Article 9. Section 7-210 adopts as its touchstone "commercial reasonableness" for the enforcement of a warehouse lien. Following the procedures of Article 9 satisfies "commercial reasonableness."

Cross references:
Sections 2-706, 7-403, 7-603, and Part 6 of Article 9.

Definitional cross references:
"Bill of lading". Section 1-201.
"Conspicuous". Section 1-201.
"Creditor". Section 1-201.
"Delivery". Section 1-201.
"Document of Title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Notification". Section 1-202.
"Notifies". Section 1-202.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.
"Warehouse". Section 7-102.

Part 3. Bills of Lading — Special Provisions

28-7-301. Liability for nonreceipt or misdescription — "Said to contain" — "Shipper's weight, load, and count" — Improper handling. — (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

History.

I.C., § 28-7-301, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-301, which comprised 1967, ch. 161, § 7-301, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-301.

Changes: Changes for clarity, style and to recognize deregulation in the transportation industry.

Purposes:

1. This section continues the rules from former Section 7-301 with one substantive change. The obligations of the issuer of the bill of lading under former subsections (2) and (3) were limited to issuers who were common carriers. Subsections (b) and (c) apply the same rules to all issuers not just common carriers. This section is compatible with the policies stated in the federal Bills of Lading Act, 49 U.S.C. § 80113 (2000).

2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. D.H. Overmyer Co. v. Nelson Brantley Glass Co., 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre-Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser. There is no implication that decisions such as Modern Tool Corp. v. Pennsylvania R. Co., 100 F. Supp. 595 (D.N.J. 1951), are disapproved.

3. This section is a restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The wording in this section — "contents or condition of contents of packages unknown" or "shipper's weight, load and count" — to indicate that the shipper loaded

the goods or that the carrier does not know the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are as important in 2002 as when the prior section initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the carrier. Subsection (e) therefore provides appropriate indemnity.

5. The word "freight" in the former Section 7-301 has been changed to "goods" to conform to international and domestic land transport usage in which "freight" means the price paid for carriage of the goods and not the goods themselves. Hence, changing the word "freight" to the word "goods" is a clarifying change that fits both international and domestic practice.

Cross references: Sections 7-203, 7-309 and 7-501.

Definitional cross references:
"Bill of lading". Section 1-201.
"Consignee". Section 7-102.
"Document of Title". Section 1-201.
"Duly negotiate". Section 7-501.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Holder". Section 1-201.
"Issuer". Section 7-102.
"Notice". Section 1-202.
"Party". Section 1-201.
"Purchaser". Section 1-201.
"Receipt of Goods". Section 2-103.
"Value". Section 1-204.

28-7-302. Through bills of lading and similar documents of title. — (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

History.
I.C., § 28-7-302, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-302, which comprised 1967, ch. 161, § 7-302, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-302.

Changes: To conform to current terminology and for style.

Purposes:

1. This section continues the rules from former Section 7-302 without substantive change. The term "performing carrier" is substituted for the term "connecting carrier" to conform the terminology of this section with terminology used in recent UNCITRAL and OAS proposals concerning transportation and through bills of lading. This change in terminology is not substantive. This section is compatible with liability on carriers under federal law. See 49 U.S.C. §§ 11706, 14706 and 15906.

The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any performing carrier and to make it clear that any such performing carrier holds the goods on terms which are defined by the document of title even though such performing carrier did not issue the document. Since the performing carrier does hold the goods on the terms of the document, it must honor a proper demand for delivery or a diversion order just as the original bailee would have to. Similarly it has the benefits of the excuses for nondelivery and limitations of liability provided for the original bailee who issued the bill. Unlike the original bailee-issuer, the performing carrier's responsibility is limited to the period while the goods are in its possession. The section does not impose any obligation to issue through bills.

2. The reference to documents other than through bills looks to the possibility that multi-purpose documents may come into use, e.g., combination warehouse receipts and bills of lading. As electronic documents of title come into common usage, storage documents (e.g., warehouse receipts) and transportation documents (e.g., bills of lading) may merge seamlessly into one electronic document that can serve both the storage and transportation segments of the movement of goods.

3. Under subsection (a) the issuer of a through bill of lading may become liable for the fault of another person. Subsection (c) gives the issuer appropriate rights of recourse.

4. Despite the broad language of subsection (a), Section 7-302 is subject to preemption by federal laws and treaties. Section 7-103. The precise scope of federal preemption in the transportation sector is a question determined under federal law.

Cross reference: Section 7-103.

Definitional cross references:

"Agreement". Section 1-201.
"Bailee". Section 7-102.
"Bill of lading". Section 1-201.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Goods". Section 7-102.
"Issuer". Section 7-102.
"Party". Section 1-201.
"Person". Section 1-201.

28-7-303. Diversion — Reconsignment — Change of instructions. — (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are

included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

History.
I.C., § 28-7-303, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-303, which comprised 1967, ch. 161, § 7-303, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-303.

Changes: To accommodate electronic documents and for style.

Purposes:

1. Diversion is a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. This section continues former Section 7-303's safe harbor rules for carriers in situations involving diversion and adapts those rules to electronic documents of title. This section works compatibly with Section 2-705. Carriers may as a business matter be willing to accept instructions from consignees in which case the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The carrier is of course subject to the provisions of mandatory filed tariffs as provided in Section 7-103.

2. It should be noted that the section provides only an immunity for carriers against liability for "misdelivery." It does not, for example, defeat the title to the goods which the consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the carrier under a nonnegotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to the consignor, the consignee may recover the goods from the consignor or the consignor's insolvent estate. However, under certain circumstances, the consignee's title may be defeated by diversion of the goods in transit to a different consignee. The rights that arise between the consignor-seller and the consignee-buyer out of a contract for the sale of goods are governed by Article 2.

Cross references:
Point 2: Article 2, Sections 7-403 and 7-504(3).

Definitional cross references:
"Bailee". Section 7-102.
"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Consignee". Section 7-102.
"Consignor". Section 7-102.
"Delivery". Section 1-201.
"Goods". Section 7-102.
"Holder". Section 1-201.
"Notice". Section 1-202.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Term". Section 1-201.

28-7-304. Tangible bills of lading in a set. — (a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one (1) bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of

lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

History.
I.C., § 28-7-304, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-304, which comprised 1967, ch. 161, § 7-304, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-304.

Changes: To limit bills in a set to tangible bills of lading and to use terminology more consistent with modern usage.

Purposes:

1. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a lawsuit that might come within Article 7. The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.

2. Electronic bills of lading in domestic or international trade will not be issued in a set given the requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single, authoritative copy. Section 7-106. Hence, this section differentiates between electronic bills of lading and tangible bills of lading. This section does not prohibit electronic data messages about goods in transit because these electronic data messages are not the issued bill of lading. Electronic data messages contain information for the carrier's management and handling of the cargo but this information for the carrier's use is not the issued bill of lading.

Cross reference: Sections 7-103, 7-303 and 7-106.

Definitional cross references:
"Bailee". Section 7-102.
"Bill of lading". Section 1-201.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Duly negotiate". Section 7-501.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Holder". Section 1-201.
"Issuer". Section 7-102.
"Person". Section 1-201.
"Receipt of goods". Section 2-103.

28-7-305. Destination bills. — (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 28-7-105, may procure a substitute bill to be issued at any place designated in the request.

History.
I.C., § 28-7-305, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-305, which comprised 1967, ch. 161, § 7-305, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is

compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-305.

Changes: To accommodate electronic bills of lading and for style.

Purposes:

1. Subsection (a) continues the rules of former Section 7-305(1) without substantive change. This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by truck and air, who do not have terminal facilities where shipments can be held to await the consignee's appearance. Order bills would be useful to take advantage of bank collection. This may be preferable to C.O.D. shipment in which the carrier, e.g., a truck driver, is the collecting and remitting agent. Financing of shipments under this plan would be handled as follows: seller at San Francisco delivers the goods to an airline with instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank indorses the bill to buyer when the buyer honors the draft. Normally seller would act through its own bank in San Francisco, which would extend credit in reliance on the airline's contract to deliver a bill to the order of its New York correspondent. This section is entirely permissive; it imposes no duty to issue such bills. Whether a performing carrier will act as issuing agent is left to agreement between carriers.

2. Subsection (b) continues the rule from former Section 7-305(2) with accommodation for electronic bills of lading. If the substitute bill changes from an electronic to a tangible medium or vice versa, the issuance of the substitute bill must comply with Section 7-105 to give the substitute bill validity and effect.

Cross reference: Section 7-105.

Definitional cross references:

"Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Receipt of goods". Section 2-103.

28-7-306. Altered bills of lading. — An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History.

I.C., § 28-7-306, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-306, which comprised 1967, ch. 161, § 7-306, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-306.

Changes: None.

Purposes:

An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not relieve the issuer of its liability on the document as originally executed. This section applies to both tangible and electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of Section 7-106 requires that any changes to the electronic document of title be readily identifiable as authorized or unauthorized. Section 7-306 should be compared to Section 7-208 where a different rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

Cross references: Sections 7-106 and 7-208.

Definitional cross references:

"Bill of lading". Section 1-201.

"Issuer". Section 7-102.

28-7-307. Lien of carrier. — (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

History.

I.C., § 28-7-307, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-307, which comprised 1967, ch. 161, § 7-307, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-307.

Changes: Expanded to cover proceeds of the goods transported.

Purposes:

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of Section 7-209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision in In re Sharon Steel Corp., 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and is the controlling precedent.

2. The reference to charges in this section means charges relating to the bailment relationship for transportation. Charges does not mean that the bill of lading must state a specific rate or a specific amount. However, failure to state a specific rate or a specific amount has legal consequences under the second sentence of subsection (a).

3. The carrier's specific lien under this section is a possessory lien. See subsection (c). Part 3 of Article 7 does not require any

particular form for a bill of lading. The carrier's lien arises when the carrier has issued a bill of lading.

Cross references:

Point 1: Sections 7-209, 9-109 and 9-333.

Point 3: Sections 7-202 and 7-209.

Definitional cross references:

"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Consignor". Section 7-102.
"Delivery". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Value". Section 1-204.

28-7-308. Enforcement of carrier's lien. — (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in section 28-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

History.

I.C., § 28-7-308, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-308, which comprised 1967, ch. 161, § 7-308, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-308.

Changes: To conform language to modern usage and for style.

Purposes:

This section is intended to give the carrier an enforcement procedure of its lien coextensive with that given the warehouse in cases other than those covering noncommercial storage by the warehouse. See Section 7-210 and comments.

Cross reference: Section 7-210.

Definitional cross references:

"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Creditor". Section 1-201.
"Delivery". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Notification". Section 1-202.
"Notifies". Section 1-202.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.

28-7-309. Duty of care — Contractual limitation of carrier's liability. — (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

History.

I.C., § 28-7-309, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-309, which comprised 1967, ch. 161, § 7-309, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-309.

Changes: References to tariffs eliminated because of deregulation, adding reference to transportation agreements, and for style.

Purposes:

1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by contract the carrier's obligation of care. Section 1-302.

Federal statutes and treaties for air, maritime and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7-103. Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (b), however, applies to the common carrier's liability as an insurer as well as to liability based on negligence. Sub-

section (b) allows the term limiting damages to appear either in the bill of lading or in the parties' transportation agreement. Compare 7-204(b). Subsection (c) allows the parties to agree to provisions regarding time and manner of presenting claims or commencing actions if the provisions are either in the bill of lading or the transportation agreement. Compare 7-204(c). Transportation agreements are commonly used to establish agreed terms between carriers and shippers that have an on-going relationship.

2. References to public tariffs in former Section 7-309(2) and (3) have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7-103. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section. As governed by contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g., a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. Art Masters Associates, Ltd. v. United Parcel Service, 77 N.Y.2d 200, 567 N.E.2d 226 (1990); *See,* Kemper Ins. Co. v. Fed. Ex. Corp., 252 F.3d 509 (1st Cir.), *cert. denied,* 534 U.S. 1020 (2001) (opinion interpreting federal law).

4. As used in this section, damages may include damages arising from delay in delivery. Delivery dates and times are often specified in the parties' contract. See Section 7-403.

Cross references: Sections 1-302, 7-103, 7-204, and 7-403.

Definitional cross references:
"Action". Section 1-201.
"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Consignor". Section 7-102.
"Document of Title". Section 1-102.
"Goods". Section 7-102.
"Value". Section 1-204.

Part 4. Warehouse Receipts and Bills of Lading — General Obligations

28-7-401. Irregularities in issue of receipt or bill or conduct of issuer. — The obligations imposed by this chapter on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

History.
I.C., § 28-7-401, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-401, which comprised 1967, ch. 161, § 7-401, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-401.

Changes: Changes for style only.

Purposes:

The bailee's liability on its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee

will not be permitted to avoid its obligation to deliver the goods (Section 7-403) or its obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document" was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. Tate v. Action Moving & Storage, Inc., 383 S.E.2d 229 (N.C. App. 1989), *rev. denied,* 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See Section 7-103.

Cross references:

Sections 7-103, 7-203, 7-204, 7-301, and 7-309.

Definitional cross references:

"Bailee". Section 7-102.
"Document of title". Section 1-201.
"Goods". Section 7-102.
"Issuer". Section 7-102.
"Person". Section 1-201.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

28-7-402. Duplicate document of title — Overissue. — A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 28-7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

History.

I.C., § 28-7-402, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-402, which comprised 1967, ch. 161, § 7-402, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-402.

Changes: Changes to accommodate electronic documents.

Purposes:

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully issued in a set of parts are not "overissue" (Section 7-304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

Section 7-105 allows documents of title to be reissued in another medium. Re-issuance of a document in an alternative medium under Section 7-105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with Section 7-105, then the document should be treated as a duplicate under this section.

2. The section applies to nonnegotiable documents to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore have had no cause of action against the issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of its transferor.

3. Overissue is defined so as to exclude the common situation where two valid documents of different issuers are outstanding for the same goods at the same time. Thus freight forwarders commonly issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g., negotiation of a delivery order will effectively transfer title in

the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 7-503 provides for cases of conflict between documents of different issuers.

Cross references:

Point 1: Sections 7-105, 7-207, 7-304, and 7-601.

Point 3: Section 7-503.

Definitional cross references:

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Document of title". Section 1-201.

"Fungible goods". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Right". Section 1-201.

28-7-403. Obligation of bailee to deliver — Excuse. — (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to section 28-2-705 or by a lessor of its right to stop delivery pursuant to section 28-12-526;

(5) A diversion, reconsignment, or other disposition pursuant to section 28-7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 28-7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

History.

I.C., § 28-7-403, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-403, which comprised 1967, ch. 161, § 7-403, p. 351, am. 1982, ch. 310, § 1, p. 775, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-403.

Changes: Definition in former Section 7-403(4) moved to Section 7-102; bracketed language in former Section 7-403(1)(b) deleted; added cross reference to Section 2A-526; changes for style.

Purposes:

1. The present section, following former Section 7-403, is constructed on the basis of

stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the pre-Code uniform acts now find their place as "excuse" under subsection (a).

2. The principal case covered by subsection (a)(1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 7-503(a). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See Sections 7-502(a)(2), 7-503(a)(1).

3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7-204 and 7-309 of this Article.

The bracketed language found in former Section 7-403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states.

Subsection (a)(4) contains a cross reference to both the seller's and the lessor's rights to stop delivery under Article 2 and Article 2A, respectively.

4. As under former Section 7-403, there is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the warehouse lien and the carrier lien under Sections 7-209 and 7-307, respectively. If the parties are in dispute about whether the request for payment of the lien is legally proper, the bailee may have recourse to interpleader. See Section 7-603.

5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated in subsection (a)(1) of this section and in Section 7-503(a). Subsection (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the bailee's lien.

6. When courts are considering subsection (a)(7), "any other lawful excuse," among others, refers to compliance with court orders under Sections 7-601, 7-602 and 7-603.

Cross references:

Point 2: Sections 7-502 and 7-503.

Point 3: Sections 2-705, 2A-526, 7-103, 7-204, 7-309 and 10-103.

Point 4: Sections 7-209, 7-307 and 7-603.

Point 5: Section 7-503(1).

Point 6: Sections 7-601, 7-602, and 7-603.

Definitional cross references:

"Bailee". Section 7-102.
"Conspicuous". Section 1-201.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Duly negotiate". Section 7-501.
"Goods". Section 7-102.
"Lessor". Section 2A-103.
"Person". Section 1-201.
"Receipt of goods". Section 2-103.
"Right". Section 1-201.
"Terms". Section 1-201.
"Warehouse". Section 7-102.

28-7-404. No liability for good-faith delivery pursuant to document of title. — A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

History.
I.C., § 28-7-404, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-404, which comprised 1967, ch. 161, § 7-404, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-404.

Changes: Changes reflect the definition of good faith in Section 1-201 [7-102] and for style.

Purposes:

This section uses the test of good faith, as defined in Section 1-201 [7-102], to continue the policy of former Section 7-404. Good faith now means "honesty in fact and the observance of reasonable commercial standards of fair dealing." The section states explicitly that the common law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen that in good faith perform obligations that they have assumed and that generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a bailee may use interpleader or other dispute resolution process. See Section 7-603.

Cross reference: Section 7-603.

Definitional cross references:

"Bailee". Section 7-102.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Person". Section 1-201.
"Receipt of goods". Section 2-103.
"Term". Section 1-201.

Part 5. Warehouse Receipts and Bills of Lading — Negotiation and Transfer

28-7-501. Form of negotiation and requirements of due negotiation. — (a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

History.

I.C., § 28-7-501, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-501, which comprised 1967, ch. 161, § 7-501, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-501.

Changes: To accommodate negotiable electronic documents of title.

Purposes:

1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains unchanged in substance from the rules in former Section 7-501. Subsection (b) is new and applies to negotiable electronic documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control. Section 1-201 definition of "delivery." The control concept as applied to negotiable electronic documents of title is the substitute for both possession and indorsement as applied to negotiable tangible documents of title. Section 7-106.

Article 7 does not separately define the term "duly negotiated." However, the elements of "duly negotiated" are set forth in subsection (a)(5) for tangible documents and (b)(3) for electronic documents. As under former Section 7-501, in order to effect a "due negotiation" the negotiation must be in the "regular course of business or financing" in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession or control appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an order bill of lading for hides or cotton not their own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsections (a)(5) or (b)(3).

The second question posed by the "regular

course" qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the "regular course" criterion has the further advantage of limiting, the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.

Any notice on the document sufficient to put a merchant on inquiry as to the "regular course" quality of the transaction will frustrate a "due negotiation." Thus irregularity of the document or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

A pre-existing claim constitutes value, and "due negotiation" does not require "new value." A usual and ordinary transaction in which documents are received as security for credit previously extended may be in "regular" course, even though there is a demand for additional collateral because the creditor "deems himself insecure." But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is "paid" in commodity paper, any question of "regular" course disappears, as the case is explicitly excepted from "due negotiation."

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the pre-Code law was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in "regular course."

4. This Article does not contain any provision creating a presumption of due negotiation to, and full rights in, a holder of a document of title akin to that created by Uniform Commercial Code Article 3. But the reason of the provisions of this Act (Section 1-307) on the *prima facie* authenticity and accuracy of third party documents, joins with the reason of the present section to work such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for this Act to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do so. Allocations of the burden of going forward with the evidence and the burden of proof are left to the procedural law of the various states.

5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and electronic documents of title.

Cross references:
Sections 1-307, 7-502 and 7-503.

Definitional cross references:
"Bearer". Section 1-201.
"Control". Section 7-106.
"Delivery". Section 1-201.
"Document of Title.". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Holder". Section 1-201.
"Notice". Section 1-202.
"Person". Section 1-201.
"Purchase". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.
"Value". Section 1-204.

28-7-502. Rights acquired by due negotiation. — (a) Subject to sections 28-7-205 and 28-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 28-7-503, title and rights acquired by due negotia-

tion are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

History.
I.C., § 28-7-502, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-502, which comprised 1967, ch. 161, § 7-502, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-502.

Changes: To accommodate electronic documents of title and for style.

Purposes:

1. This section applies to both tangible and electronic documents of title. The elements of duly negotiated, which constitutes a due negotiation, are set forth in Section 7-501. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (Section 7-503).

2. Subsection (a)(3) covers the case of "feeding" of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (a)(4) of the bailee's direct obligation to the holder precludes the defense that the document in question was "spent" after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as nonnegligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7-503(b) and Comment.

4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection (a), but it has been included since such explicit reference was provided under former Section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. The language "any stoppage" is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser's rights.

Cross references:
Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

Definitional cross references:
"Bailee". Section 7-102.
"Control". Section 7-106.
"Delivery". Section 1-201.
"Delivery order". Section 7-102.
"Document of title". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible". Section 1-201.
"Goods". Section 7-102.
"Holder". Section 1-201.
"Issuer". Section 7-102.
"Person". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.
"Warehouse receipt". Section 1-201.

28-7-503. Document of title to goods defeated in certain cases. — (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 28-7-403; or

(C) Power of disposition under section 28-2-403, 28-12-304(2), 28-12-305(2), 28-9-320 or 28-9-321(c), or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 28-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History.
I.C., § 28-7-503, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-503, which comprised 1967, ch. 161, § 7-503, p. 351; am. 2001, ch. 208, § 13, p. 704, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-503.

Changes: Changes to cross-reference to Article 2A and for style.

Purposes:

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief's own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord's or the mortgagee's rights as against one who takes by due negotiation of a negotiable document. In re Sharon Steel, 176 B.R. 384 (Bankr. W.D. Pa. 1995); In re R.V. Segars Co., 54 B.R. 170 (Bankr. S.C. 1985); In re Jamestown Elevators, Inc., 49 B.R. 661 (Bankr. N.D. 1985).

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are "entrusted" to the factor "with actual . . . authority . . . to sell" under subsection (a)(1), and if the factor procures a negotiable document of title it can transfer the owner's interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to it simply for safekeeping or storage may be entrusted under circumstances which give the factor "apparent authority to ship, store or sell" under subsection (a)(1), or power of disposition under Section 2-403, 2A-304(2), 2A-305(2), 7-205, 9-320, or 9-321(c) or under a statute such as the earlier Factors Acts, or under a rule of law giving effect to apparent ownership. See Section 1-103.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than factors for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. This Act is clear that such persons assume full risk that the agent to whom the

goods are so delivered may ship or store in breach of duty, take a document to the agent's own order and then proceed to misappropriate the negotiable document of title that embodies the goods. This Act makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only "in the regular course of business or financing" and that the purchase be in good faith and without notice. See Section 7-501. Documents of title have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a "conditional delivery" or under "cash sale" terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller's interest by transfer of the goods to certain good faith purchasers. See Section 2-403. Both in policy and under the language of subsection (a)(1) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

This Comment 1 should be considered in interpreting delivery, entrustment or acquiescence in application of Section 7-209(c).

2. Under subsection (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the rights of a transferee of a nonnegotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in that person's procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 7-402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a transferee may be defeated under Section 7-504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights before notification of the holder's rights. Section 7-504(b)(2). But an accepted delivery order has the same effect as a document issued by the bailee.

3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to the freight forwarder's document of title, since the bill on its face gives notice of the fact that a freight forwarder is in the picture and the freight forwarder has in all probability issued a document of title. But the carrier is protected in following the terms of its own bill of lading.

Cross references:

Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320, 9-321(c), and 9-331.

Point 2: Sections 7-402 and 7-504.

Point 3: Sections 7-402, 7-403 and 7-404.

Definitional cross references:

"Bill of lading". Section 1-201.
"Contract for sale". Section 2-106.
"Delivery". Section 1-201.
"Delivery order". Section 7-102.
"Document of title". Section 1-201.
"Duly negotiate". Section 7-501.
"Goods". Section 7-102.
"Person". Section 1-201.
"Right". Section 1-201.
"Warehouse receipt". Section 1-201.

28-7-504. Rights acquired in absence of due negotiation — Effect of diversion — Stoppage of delivery. — (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under section 28-2-402 or 28-12-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the

bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 28-2-705 or a lessor under section 28-12-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

History.
I.C., § 28-7-504, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-504, which comprised 1967, ch. 161, § 7-504, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-504.

Changes: To include cross-references to Article 2A and for style.

Purposes:

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor's power to transfer rights which the transferor has or has "actual authority to convey." Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare Section 2-403 on good faith purchase of goods.) This section applies to both tangible and electronic documents of title.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True, the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser's transferor (contrast subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to its consignor against a straight bill of lading can thereby acquire the position of a good faith purchaser of goods under provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize its status by compelling indorsement of the document (see Section 7-506).

2. As in the case of transfer—as opposed to "due negotiation"—of negotiable documents, subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights as the transferor has or has "actual authority" to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving

notice of the transfer to the bailee. New subsection (b)(3) provides for the rights of a lessee in the ordinary course.

Subsection (b)(2) and (3) require delivery of the goods. Delivery of the goods means the voluntary transfer of physical possession of the goods. See amended Section 2-103.

3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under pre-Code passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in accordance with this subsection. The same result should obtain if the substituted consignee is a lessee in ordinary course. The extent of the lessee's interest in the goods is less than a buyer's interest in the goods. However, as against the first consignee and the lessee in ordinary course as the substituted consignee, the lessee's rights in the goods as granted under the lease are superior to the first consignee's rights.

4. Subsection (d) gives the carrier an express right to indemnity where the carrier honors a seller's request to stop delivery.

5. Section 1-202 gives the bailee protection, if due diligence is exercised where the bailee's organization has not had time to act on a notification.

Cross references: Point 1: Sections 2-403 and 7-506.

Point 2: Sections 2-403 and 2A-304.

Point 3: Sections 7-303, 7-403(a)(5) and 7-404.

Point 4: Sections 2-705 and 7-403(a)(4).

Point 5: Section 1-202.

Definitional cross references:

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Buyer in ordinary course of business". Section 1-201.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document of Title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Honor". Section 1-201.

"Lessee in ordinary course". Section 2A-103.

"Notification". Section 1-202.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

28-7-505. Indorser not guarantor for other parties. — The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

History.

I.C., § 28-7-505, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-505, which comprised 1967, ch. 161, § 7-505, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-505.

Changes: Limited to tangible documents of title.

Purposes:

This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. The indorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee's rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the document by the bailee will occur. See Section 7-502(a)(4) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled and the policy of this section excludes any continuing obligation on

the part of the indorser for the bailee's ultimate actual performance.

Cross references: Sections 7-106 and 7-502.

Definitional cross references:
"Bailee". Section 7-102.
"Document of title". Section 1-201.
"Party". Section 1-201.

28-7-506. Delivery without indorsement — Right to compel indorsement. — The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

History.
I.C., § 28-7-506, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-506, which comprised 1967, ch. 161, § 7-506, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Article (Section 7-501(a)(5)) on "due negotiation." Similarly, despite the transfer to the transferee of the transferor's title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7-403(c).

Cross references:
Point 1: Sections 7-106 and 7-505.
Point 2: Sections 7-501(a)(5) and 7-403(c).

Definitional cross references:
"Document of title". Section 1-201.
"Rights". Section 1-201.

28-7-507. Warranties on negotiation or delivery of document of title. — If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 28-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

History.
I.C., § 28-7-507, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-507, which comprised 1967, ch. 161, § 7-507, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is

compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-507.

Changes: Substitution of the word "delivery" for the word "transfer," reference leasing transactions and style.

Purposes:

1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arises under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318 and Sections 2A-210 through 2A-316) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, are stated in Section 7-508.

Cross references:

Point 1: Sections 2-312 through 2-318 and 2A-310 through 2A-316.

Point 2: Section 7-508.

Definitional cross references:

"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Genuine". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Value". Section 1-204.

28-7-508. Warranties of collecting bank as to documents of title. — A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

History.

I.C., § 28-7-508, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-508, which comprised 1967, ch. 161, § 7-508, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4-104 and Section 5-102, Comment 11.

Cross references:

Sections 4-104, 4-203, 4-501 through 4-504, 5-102, and 7-507.

Definitional cross references:

"Collecting bank". Section 4-105.
"Delivery". Section 1-201.
"Document of title". Section 1-102.
"Documentary draft". Section 4-104.
"Intermediary bank". Section 4-105.
"Good faith". Section 1-201 [7-102].

28-7-509. Adequate compliance with commercial contract. — Whether a document of title is adequate to fulfill the obligations of a

contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 2, 5 or 12, title 28, Idaho Code.

History.
I.C., § 28-7-509, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-509, which comprised 1967, ch. 161, § 7-509, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-509.

Changes: To reference Article 2A.

Purposes:

To cross-refer to the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

Cross references: Articles 2, 2A and 5.

Definitional cross references:
"Contract for sale". Section 2-106.
"Document of title". Section 1-201.
"Lease". Section 2A-103.

Part 6. Warehouse Receipts and Bills of Lading — Miscellaneous Provisions

28-7-601. Lost, stolen, or destroyed documents of title. — (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

History.
I.C., § 28-7-601, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-601, which comprised 1967, ch. 161, § 7-601, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7-601.

Changes: To accommodate electronic documents; to provide flexibility to courts similar

to the flexibility in Section 3-309; to update to the modern era of deregulation; and for style.

Purposes:

1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory issuance of a substitute document. Compare Section 7-402. Using language similar to that found in Section 3-309, courts are given discretion as to what is adequate protection when the lost, stolen or destroyed document was negotiable or whether security should be required when the lost, stolen or destroyed document was nonnegotiable. In determining whether a party is adequately protected against loss in the case of a negotiable document, the court should consider the likelihood that the party will suffer a loss. The court is also given discretion as to the bailee's costs and attorney fees. The rights and obligations of a bailee under this section depend upon whether the document of title is lost, stolen or destroyed and is in addition to the ability of the bailee to bring an action for interpleader. See Section 7-603.

2. Courts have the authority under this section to order a substitute document for either tangible or electronic documents. If the substitute document will be in a different medium than the original document, the court should fashion its order in light of the requirements of Section 7-105.

3. Subsection (b) follows prior Section 7-601 in recognizing the legality of the well established commercial practice of bailees making delivery in good faith when they are satisfied that the claimant is the person entitled under a missing (i.e., lost, stolen, or destroyed) negotiable document. Acting without a court order, the bailee remains liable on the original negotiable document and, to avoid conversion liability, the bailee may insist that the claimant provide an indemnity bond. Cf. Section 7-403.

4. Claimants on nonnegotiable instruments are permitted to avail themselves of the subsection (a) procedure because straight (nonnegotiable) bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to Section 7-403, to a person claiming goods under a nonnegotiable document that the same person claims is lost, stolen, or destroyed.

5. The bailee's lien should be protected when a court orders delivery of the goods pursuant to this section.

Cross References:
Point 1: Sections 3-309, 7-402 and 7-603.
Point 2: Section 7-105.
Point 3: Section 7-403.
Point 4: Section 7-403.
Point 5: Sections 7-209 and 7-307.
Definitional cross references:
"Bailee". Section 7-102.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Person". Section 1-201.

28-7-602. Judicial process against goods covered by negotiable documents of title. — Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History.
I.C., § 28-7-602, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-602, which comprised 1967, ch. 161, § 7-602, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Former Section 7-602.

Changes: Changes to accommodate electronic documents of title and for style.

Purposes:

1. The purpose of the section is to protect the bailee from conflicting claims of the document of title holder and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable document of title through the surrender of possession of a tangible document or control of an electronic document. However, if the document of title was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor's interest in the goods.

2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser for value. In such case the lien will be defeated.

Cross references:

Sections 7-106 and 7-501 through 7-503.

Definitional cross references:

"Bailee". Section 7-102.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Goods". Section 7-102.
"Notice". Section 1-202.
"Person". Section 1-201.
"Purchase". Section 1-201.
"Value". Section 1-204.

28-7-603. Conflicting claims — Interpleader. — If more than one (1) person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

History.

I.C., § 28-7-603, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Former § 28-7-603, which comprised 1967, ch. 161, § 7-603, p. 351, was repealed by S.L. 2004, ch. 42, § 1.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Former Section 7-603.

Changes: Changes for style only.

Purposes:

1. The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. *See e.g.,* Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc., 162 Ga. App. 741, 293 S.E.2d 30 (1982).

2. This section allows the bailee to bring an interpleader action but does not provide an exclusive basis for allowing interpleader. If either state or federal procedural rules allow an interpleader in other situations, the bailee may commence an interpleader under those rules. Even in an interpleader to which this section applies, the state or federal process of interpleader applies to the bailee's action for interpleader. For example, state or federal interpleader statutes or rules may permit a bailee to protect its lien or to seek attorney's fees and costs in the interpleader action.

Cross reference: Point 1: Section 7-403.

Definitional cross references:

"Action". Section 1-201.
"Bailee". Section 7-102.
"Delivery". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Reasonable time". Section 1-205.

PART 7. MISCELLANEOUS PROVISIONS

28-7-701. Effective date. — This act takes effect on July 1, 2004.

History.
I.C., § 28-7-701, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. The words "this act" mean S.L. 2004, ch. 42, which is compiled as §§ 28-7-101 through 28-7-704 and various other amended sections throughout title 28.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

28-7-702. Repeals. — Existing chapter 7, title 28, Idaho Code, and section 28-10-104, Idaho Code, are repealed.

History.
I.C., § 28-7-702, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

28-7-703. Applicability. — This act applies to a document of title that is issued or a bailment that arises on or after July 1, 2004. This act does not apply to a document of title that is issued or a bailment that arises before July 1, 2004, even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after July 1, 2004. This act does not apply to a right of action that has accrued before July 1, 2004.

History.
I.C., § 28-7-703, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. The words "this act" mean S.L. 2004, ch. 42, which is compiled as §§ 28-7-101 through 28-7-704 and as various amended sections throughout title 28.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

28-7-704. Savings clause. — A document of title issued or a bailment that arises before July 1, 2004, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

History.
I.C., § 28-7-704, as added by 2004, ch. 42, § 2, p. 77.

Compiler's Notes. The words "this act" mean S.L. 2004, ch. 42, which is compiled as §§ 28-7-101 through 28-7-704 and as various amended sections throughout title 28.

Section 1 of S.L. 2004, ch. 42 contained a repeal and section 4 of S.L. 2004, ch. 42 is compiled as § 28-2-103.

CHAPTER 8

INVESTMENT SECURITIES

PART 1. SHORT TITLE AND GENERAL MATTERS

PART 1. SHORT TITLE AND GENERAL MATTERS

28-8-103. Rules for determining whether certain obligations and interests are securities or financial assets. — (1) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, title 28, even though it also meets the requirements of chapter 3, title 28. However, a negotiable instrument governed by chapter 3, title 28, is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in section 28-9-102(a)(15), is not a security or a financial asset.

(7) A document of title is not a financial asset unless section 28-8-102(1)(i)(iii) applies.

History.
I.C., § 28-8-103, as added by 1995, ch. 272, § 2, p. 873; am. 2001, ch. 208, § 14, p. 704; am. 2004, ch. 42, § 20, p. 77.

Compiler's Notes. Sections 19 and 21 of S.L. 2004, ch. 42 are compiled as §§ 28-4-210 and 28-9-102, respectively.

OFFICIAL COMMENT

1. This section contains rules that supplement the definitions of "financial asset" and "security" in Section 8-102. The Section 8-102 definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the Section 8-102 definitions to investment products not covered by this section.

2. Subsection (a) establishes an unconditional rule that ordinary corporate stock is a security. That is so whether or not the particular issue is dealt in or traded on securities exchanges or in securities markets. Thus, shares of closely held corporations are Article 8 securities.

3. Subsection (b) establishes that the Article 8 term "security" includes the various forms of the investment vehicles offered to the public by investment companies registered as such under the federal Investment Company Act of 1940, as amended. This clarification is prompted principally by the fact that the typical transaction in shares of open-end investment companies is an issuance or re-

demption, rather than a transfer of shares from one person to another as is the case with ordinary corporate stock. For similar reasons, the definitions of indorsement, instruction, and entitlement order in Section 8-102 refer to "redemptions" as well as "transfers," to ensure that the Article 8 rules on such matters as signature guaranties, Section 8-306, assurances, Sections 8-402 and 8-507, and effectiveness, Section 8-107, apply to directions to redeem mutual fund shares. The exclusion of insurance products is needed because some insurance companies separate accounts are registered under the Investment Company Act of 1940, but these are not traded under the usual Article 8 mechanics.

4. Subsection (c) is designed to foreclose interpretive questions that might otherwise be raised by the application of the "of a type" language of Section 8-102(a)(15)(iii) to partnership interests. Subsection (c) establishes the general rule that partnership interests or shares of limited liability companies are not Article 8 securities unless they are in fact dealt in or traded on securities exchanges or in securities markets. The issuer, however, may explicitly "opt-in" by specifying that the interests or share are securities governed by Article 8. Partnership interests or shares of limited liability companies are included in the broader term "financial asset." Thus, if they are held through a securities account, the indirect holding system rules of Part 5 apply, and the interest of a person who holds them through such an account is a security entitlement.

5. Subsection (d) deals with the line between Article 3 negotiable instruments and Article 8 investment securities. It continues the rule of the prior version of Article 8 that a writing that meets the Article 8 definition is covered by Article 8 rather than Article 3, even though it also meets the definition of negotiable instrument. However, subsection (d) provides that an Article 3 negotiable instrument is a "financial asset" so that the indirect holding system rules apply if the instrument is held through a securities intermediary. This facilitates making items such as money market instruments eligible for deposit in clearing corporations.

6. Subsection (e) is included to clarify the treatment of investment products such as traded stock options, which are treated as financial assets but not securities. Thus, the indirect holding system rules of Part 5 apply, but the direct holding system rules of Parts 2, 3, and 4 do not.

7. Subsection (f) excludes commodity contracts from all of Article 8. However, under Article 9, commodity contracts are included in the definition of "investment property." Therefore, the Article 9 rules on security interests in investment property do apply to security interests in commodity positions. See 9-102 and Comment 6 thereto. "Commodity contract" is defined in Section 9-102(a)(15).

8. Subsection (g) allows a document of title to be a financial asset and thus subject to the indirect holding system rules of Part 5 only to the extent that the intermediary and the person entitled under the document agree to do so. This is to prevent the inadvertent application of the Part 5 rules to intermediaries who may hold either electronic or tangible documents of title.

Definitional Cross References:

"Clearing corporation". Section 8-102(a)(5).

"Commodity contract". Section 9-102(a)(15).

"Financial asset". Section 8-102(a)(9).

"Security". Section 8-102(a)(15).

"Security certificate". Section 8-102(a)(16).

CHAPTER 9

SECURED TRANSACTIONS

Part 1. General Provisions

Part 2. Effectiveness of Security Agreement — Attachment of Security Interest — Rights of Parties to Security Agreement

Part 3. Perfection and Priority

PART 1. GENERAL PROVISIONS

28-9-101. Short title.

Collateral References. Consignment transactions under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R. 6th 289.

28-9-102. Definitions and index of definitions. [Effective until July 1, 2013.] — (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance: (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or a person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include: (i) rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter of credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not

more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and

includes a monetary obligation with respect to software used in the goods. The term does not include: (i) charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(24) "Consumer goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which: (i) an individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 28-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
(33) "Equipment" means goods other than inventory, farm products or consumer goods.
(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
(A) crops grown, growing, or to be grown, including:
(i) crops produced on trees, vines and bushes; and
(ii) aquatic goods produced in aquacultural operations;
(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
(C) supplies used or produced in a farming operation; or
(D) products of crops or livestock in their unmanufactured states.
(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
(36) "File number" means the number assigned to an initial financing statement pursuant to section 28-9-519(a).
(37) "Filing office" means an office designated in section 28-9-501 as the place to file a financing statement.
(38) "Filing office rule" means a rule adopted pursuant to section 28-9-526.
(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 28-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
(44) "Goods" means all things that are movable when a security interest attaches. The term includes: (i) fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any

supporting information provided in connection with a transaction relating to the program if: (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter of credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.

(54) "Manufactured home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under section 28-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means: (i) money; (ii) money's worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in section 28-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 28-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) the spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

(64) "Proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 28-9-620, 28-9-621 and 28-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 28-2-401, 28-2-505, 28-2-711(3), 28-4-210, 28-5-120 or 28-12-508(5).

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record

or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(b) "Control" as provided in section 28-7-106 and the following definitions in other chapters apply to this chapter:

"Applicant"	section 28-5-102.
"Beneficiary"	section 28-5-102.
"Broker"	section 28-8-102.
"Certificated security"	section 28-8-102.
"Check"	section 28-3-104.
"Clearing corporation"	section 28-8-102.
"Contract for sale"	section 28-2-106.
"Customer"	section 28-4-104.
"Entitlement holder"	section 28-8-102.
"Financial asset"	section 28-8-102.
"Holder in due course"	section 28-3-302.
"Issuer" (with respect to a letter of credit or letter of credit right)	section 28-5-102.
"Issuer" (with respect to a security)	section 28-8-201.
"Issuer" (with respect to documents of title)	section 28-7-102.
"Lease"	section 28-12-103.
"Lease agreement"	section 28-12-103.
"Lease contract"	section 28-12-103.
"Leasehold interest"	section 28-12-103.
"Lessee"	section 28-12-103.
"Lessee in ordinary course of business"	section 28-12-103.
"Lessor"	section 28-12-103.
"Lessor's residual interest"	section 28-12-103.
"Letter of credit"	section 28-5-102.
"Merchant"	section 28-2-104.
"Negotiable instrument"	section 28-3-104.
"Nominated person"	section 28-5-102.
"Note"	section 28-3-104.
"Proceeds of a letter of credit"	section 28-5-114.
"Prove"	section 28-3-103.

"Sale"	section 28-2-106.
"Securities account"	section 28-8-501.
"Securities intermediary"	section 28-8-102.
"Security"	section 28-8-102.
"Security certificate"	section 28-8-102.
"Security entitlement"	section 28-8-102.
"Uncertificated security"	section 28-8-102.

(c) Chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.

I.C., § 28-9-102, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 1, p. 290; am. 2004, ch. 42, § 21, p. 77.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-102.

Sections 20 and 22 of S.L. 2004, ch. 42 are compiled as §§ 28-8-103 and 28-9-203, respectively.

Cited in: Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

ANALYSIS

Commercial torts.
Proceeds.
Writing required.

Commercial Torts.

Where the debtors' complaint against an electrical company that alleged breach of contract and warranty, negligence, fraud, and consumer protection violations made apportionment among the claims impossible, and since the suit was primarily premised on a contract for services, despite the lack of a written contract, the action was not a commercial tort claim; the action was a general intangible, or a "thing in action" and was subject to the first creditor's security agreement. In re Wiersma, 283 Bankr. 294 (Bankr. D. Idaho 2002), aff'd in part, 324 Bankr. 92 (B.A.P. 9th Cir. 2005).

Proceeds.

Attorney's security interest in a promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The security agreement did not limit the types of proceeds to which the attorney's security interest would attach because the attorney identified specific proceeds in the security agreement, and a party who seeks to limit the type of statutory proceeds to which its security interest attaches must state an intent to limit proceeds in the security agreement. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

Writing Required.

In Chapter 7 proceedings, since there was no written loan agreement between the debor and her creditor father, there was no perfected security interest which could be avoided by the bankruptcy trustee, and, thus, debtor was entitled to a $3800 exemption from proceeds of the sale of her vehicle. In re Seibold, 351 B.R. 741 (Bankr. D. Idaho 2006).

Collateral References. Consignment transactions under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R. 6th 289.

OFFICIAL COMMENT

1. Source. All terms that are defined in Article 9 and used in more than one section are consolidated in this section. Note that the definition of "security interest" is found in Section 1-201, not in this Article, and has been revised. See Appendix I. Many of the definitions in this section are new; many others derive from those in former Section 9-105. The following Comments also indicate other sections of former Article 9 that defined (or explained) terms.

2. Parties to Secured Transactions.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this Article redefines "debtor" and adds new defined terms, "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these definitions distinguish among three classes of persons: (i) those persons who may have a stake in the proper enforcement of a security interest by virtue of their non-lien property interest (typically, an ownership interest) in the collateral, (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt, and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforce-

ment of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty § 1 (1996), contains a useful explanation of the concept. Obligors in the third class are neither debtors nor secondary obligors. With one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect non-debtor obligors only if they are "secondary obligors."

By including in the definition of "debtor" all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee's identity. Exculpatory provisions in Part 6 protect the secured party in that circumstance. See Sections 9-605 and 9-628. The definition renders unnecessary former Section 9-112, which governed situations in which collateral was not owned by the debtor. The definition also includes a "consignee," as defined in this section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lienholders are excluded from the definition of "debtor" because the interests of those parties normally derive from and encumber a debtor's interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

Consider the following examples:

Example 1: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Behnfeldt is a debtor and an obligor.

Example 2: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs a negotiable note as maker. As before, Behnfeldt is the debtor and an obligor. As an accommodation party (see Section 3-419), Bruno is a secondary obligor. Bruno has this status even if the note states that her obligation is a primary obligation and that she waives all suretyship defenses.

Example 3: Behnfeldt borrows money on an unsecured basis. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. Inasmuch as Behnfeldt does not have a property interest in the Honda, Behnfeldt is not a debtor. Having granted the security interest, Bruno is the debtor. Because Behnfeldt is a principal obligor, she is not a secondary obligor. Whatever the outcome of enforcement of the security interest against the Honda or Bruno's secondary obligation, Bruno will look to Behnfeldt for her losses. The enforcement will not affect Behnfeldt's aggregate obligations.

When the principal obligor (borrower) and the secondary obligor (surety) each has granted a security interest in different collateral, the status of each is determined by the collateral involved.

Example 4: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. When the secured party enforces the security interest in Behnfeldt's Miata, Behnfeldt is the debtor, and Bruno is a secondary obligor. When the secured party enforces the security interest in the Honda, Bruno is the "debtor." As in Example 3, Behnfeldt is an obligor, but not a secondary obligor.

b. "Secured Party." The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that Part 6 imposes upon a secured party. The definition of "secured party" also includes a "consignor," a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

The definition of "secured party" clarifies the status of various types of representatives. Consider, for example, a multi-bank facility under which Bank A, Bank B, and Bank C are lenders and Bank A serves as the collateral agent. If the security interest is granted to the banks, then they are the secured parties. If the security interest is granted to Bank A as collateral agent, then Bank A is the secured party.

c. Other Parties. A "consumer obligor" is defined as the obligor in a consumer transaction. Definitions of "new debtor" and "original debtor" are used in the special rules found in Sections 9-326 and 9-508.

3. Definitions Relating to Creation of a Security Interest.

a. "Collateral." As under former Section 9-105, 'collateral' is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this Article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the Article. It includes property subject to

an agricultural lien as well as payment intangibles and promissory notes that have been sold.

b. "Security Agreement." The definition of "security agreement" is substantially the same as under former Section 9-105-an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former Article 9 to refer to the document or writing that contained a debtor's security agreement. This Article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law *characterize* the transaction as a security interest but rather on whether the transaction falls within the definition of "security interest" in Section 1-201. Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction. See Section 1-203.

4. Goods-Related Definitions.

a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former Section 9-105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification.

The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases — a physician's car or a farmer's truck that might be either consumer goods or equipment — the principal use to which the property is put is determinative. Goods can fall into different classes at different times. For example, a radio may be inventory in the hands of a dealer and consumer goods in the hands of a consumer. As under former Article 9, goods are "equipment" if they do not fall into another category.

The definition of "consumer goods" follows former Section 9-109. The classification turns on whether the debtor uses or bought the goods for use "primarily for personal, family, or household purposes."

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of "inventory" makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are "farm products" if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms "crops" and "livestock" are not defined. The new definition of "farming operations" is for clarification only.

Crops, livestock, and their products cease to be "farm products" when the debtor ceases to be engaged in farming operations with respect to them. If, for example, they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not specified in this Article. At one end of the spectrum, some processes are so closely connected with farming — such as pasteurizing milk or boiling sap to produce maple syrup or sugar — that they would not constitute manufacturing. On the other hand an extensive canning operation would be manufacturing. Once farm products have been subjected to a manufacturing operation, they normally become inventory.

The revised definition of "farm products" clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be crops and those that are animal would be livestock, this Article leaves the courts free to classify the goods on a case-by-case basis. See Section 9-324, Comment 11.

The definitions of "goods" and "software" are also mutually exclusive. Computer programs usually constitute "software," and, as such, are not "goods" as this Article uses the

terms. However, under the circumstances specified in the definition of "goods," computer programs embedded in goods are part of the "goods" and are not "software."

b. "Accession"; "Manufactured Home"; "Manufactured-Home Transaction." Other specialized definitions of goods include 'accession' (see the special priority and enforcement rules in Section 9-335), and "manufactured home" (see Section 9-515, permitting a financing statement in a "manufactured-home transaction" to be effective for 30 years). The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. § 5401 et seq., and is intended to have the same meaning.

c. "As-Extracted Collateral." Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article. See the definition of "goods," which excludes "oil, gas, and other minerals before extraction." To take account of financing practices reflecting the shift from real to personal property, this Article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., Sections 9-301(4) (law governing perfection and priority); 9-501 (place of filing), 9-502 (contents of financing statement), 9-519 (indexing of records). The new term, 'as-extracted collateral,' refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at . . . the minehead" is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real-property law, Lender does not acquire a security interest under this Article until the oil becomes personal property, i.e., until is extracted and becomes "goods" to which this Article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral."

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated agreement, Debtor agrees to sell to Lender the right to payment from Buyer. This right to payment is an account that constitutes "as-extracted collateral." If Lender then resells the account to Financer, Financer acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financer's collateral (the account it owns) is not "as-extracted collateral."

Example 7: Under the facts of Example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral," inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

5. Receivables-related Definitions.

a. "Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral." The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. Among the types of property that are expressly excluded from the definition is "a right to payment for money or funds advanced or sold." As defined in Section 1-201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account," however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account." However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are "as-extracted collateral." See Comment 4.c., Examples 6 and 7.

b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper." "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records." The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, or a lease of specific goods and

license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods.* The definition also makes clear that rights to payment arising out of credit-card transactions are not chattel paper.

Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels.

Under former Section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this Article, traditional, written chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies.

The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to electronic form (e.g., by creating electronic images of a signed writing). Or, records may be initially created and executed in electronic form (e.g., a lessee might authenticate an electronic record of a lease that is then stored in electronic form). In either case the resulting records are electronic chattel paper.

c. "Instrument"; "Promissory Note." The definition of "instrument" includes a negotiable instrument. As under former Section 9-105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an indorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate classification of personal property. The definition makes clear that rights to payment arising out of credit-card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of Article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See Section 3-104.

d. "General Intangible"; "Payment Intangible." "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of "general intangible," "things in action" includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

"Payment intangible" is a subset of the definition of "general intangible." The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term "payment intangible," however, embraces only those general intangibles "under which the account debtor's principal obligation is a monetary obligation."

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the promisee's right to payment of money is assigned separately, the right is an account or payment intangible, depending on how the account debtor's obligation arose. When all the promisee's rights are assigned together, an account, a payment intangible,

and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary covenants, such as covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like. This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights.

Every "payment intangible" is also a "general intangible." Likewise, "software" is a "general intangible" for purposes of this Article. See Comment 25. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

e. "Letter-of-Credit Right." The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in Section 5-102). However, it does not include a beneficiary's right to demand payment or performance. Transfer of those rights to a transferee beneficiary is governed by Article 5. See Sections 9-107, Comment 4, and 9-329, Comments 3 and 4.

f. "Supporting Obligation." This new term covers the most common types of credit enhancements-suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition. As explained in Comment 2.a., suretyship law determines whether an obligation is "secondary" for purposes of this definition. Section 9-109 generally excludes from this Article transfers of interests in insurance policies. However, the regulation of a secondary obligation as an insurance product does not necessarily mean that it is a "policy of insurance" for purposes of the exclusion in Section 9-109. Thus, this Article may cover a secondary obligation (as a supporting obligation), even if the obligation is issued by a regulated insurance company and the obligation is subject to regulation as an "insurance" product.

This Article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See Sections 9-203, 9-308, 9-310, and 9-322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself. See Section 9-102 (defining "proceeds") and Comment 13.b. As such, the collections and distributions are subject to the priority rules applicable to proceeds generally. See Section 9-322. However, under the special rule governing security interests in a letter-of-credit right, a secured party's failure to obtain control (Section 9-107) of a letter-of-credit right supporting collateral may leave its security interest exposed to a priming interest of a party who does take control. See Section 9-329 (security interest in a letter-of-credit right perfected by control has priority over a conflicting security interest).

g. "Commercial Tort Claim." This term is new. A tort claim may serve as original collateral under this Article only if it is a "commercial tort claim." See Section 9-109(d). Although security interests in commercial tort claims are within its scope, this Article does not override other applicable law restricting the assignability of a tort claim. See Section 9-401. A security interest in a tort claim also may exist under this Article if the claim is proceeds of other collateral.

h. "Account Debtor." An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of this change from the definition in former Article 9 is that the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

i. Receivables Under Government Entitlement Programs. This Article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another

type of collateral. The right also might be proceeds of collateral (e.g., crops).

6. Investment-Property-Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property." These definitions are substantially the same as the corresponding definitions in former Section 9-115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account. Former Section 9-115 was added in conjunction with Revised Article 8 and contained a variety of rules applicable to security interests in investment property. These rules have been relocated to the appropriate sections of Article 9. See, e.g., Sections 9-203 (attachment), 9-314 (perfection by control), 9-328 (priority).

The terms "security," "security entitlement," and related terms are defined in Section 8-102, and the term "securities account" is defined in Section 8-501. The terms "commodity account," "commodity contract," "commodity customer," and "commodity intermediary" are defined in this section. Commodity contracts are not "securities" or "financial assets" under Article 8. See Section 8-103(f). Thus, the relationship between commodity intermediaries and commodity customers is not governed by the indirect-holding-system rules of Part 5 of Article 8. For securities, Article 9 contains rules on security interests, and Article 8 contains rules on the rights of transferees, including secured parties, on such matters as the rights of a transferee if the transfer was itself wrongful and gives rise to an adverse claim. For commodity contracts, Article 9 establishes rules on security interests, but questions of the sort dealt with in Article 8 for securities are left to other law.

The indirect-holding-system rules of Article 8 are sufficiently flexible to be applied to new developments in the securities and financial markets, where that is appropriate. Accordingly, the definition of "commodity contract" is narrowly drafted to ensure that it does not operate as an obstacle to the application of the Article 8 indirect-holding-system rules to new products. The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries. The effect of this definition is that the category of commodity contracts that are excluded from Article 8 but governed by Article 9 is essentially the same as the category of contracts that fall within the exclusive regulatory jurisdiction of the federal Commodity Futures Trading Commission.

Commodity contracts are different from securities or other financial assets. A person who enters into a commodity futures contract is not buying an asset having a certain value and holding it in anticipation of increase in value. Rather the person is entering into a contract to buy or sell a commodity at set price for delivery at a future time. That contract may become advantageous or disadvantageous as the price of the commodity fluctuates during the term of the contract. The rules of the commodity exchanges require that the contracts be marked to market on a daily basis; that is, the customer pays or receives any increment attributable to that day's price change. Because commodity customers may incur obligations on their contracts, they are required to provide collateral at the outset, known as "original margin," and may be required to provide additional amounts, known as "variation margin," during the term of the contract.

The most likely setting in which a person would want to take a security interest in a commodity contract is where a lender who is advancing funds to finance an inventory of a physical commodity requires the borrower to enter into a commodity contract as a hedge against the risk of decline in the value of the commodity. The lender will want to take a security interest in both the commodity itself and the hedging commodity contract. Typically, such arrangements are structured as security interests in the entire commodity account in which the borrower carries the hedging contracts, rather than in individual contracts.

One important effect of including commodity contracts and commodity accounts in Article 9 is to provide a clearer legal structure for the analysis of the rights of commodity clearing organizations against their participants and futures commission merchants against their customers. The rules and agreements of commodity clearing organizations generally provide that the clearing organization has the right to liquidate any participant's positions in order to satisfy obligations of the participant to the clearing corporation. Similarly, agreements between futures commission merchants and their customers generally provide that the futures commission merchant has the right to liquidate a customer's positions in order to satisfy obligations of the customer to the futures commission merchant.

The main property that a commodity intermediary holds as collateral for the obligations that the commodity customer may incur under its commodity contracts is not other commodity contracts carried by the customer but

the other property that the customer has posted as margin. Typically, this property will be securities. The commodity intermediary's security interest in such securities is governed by the rules of this Article on security interests in securities, not the rules on security interests in commodity contracts or commodity accounts.

Although there are significant analytic and regulatory differences between commodities and securities, the development of commodity contracts on financial products in the past few decades has resulted in a system in which the commodity markets and securities markets are closely linked. The rules on security interests in commodity contracts and commodity accounts provide a structure that may be essential in times of stress in the financial markets. Suppose, for example that a firm has a position in a securities market that is hedged by a position in a commodity market, so that payments that the firm is obligated to make with respect to the securities position will be covered by the receipt of funds from the commodity position. Depending upon the settlement cycles of the different markets, it is possible that the firm could find itself in a position where it is obligated to make the payment with respect to the securities position before it receives the matching funds from the commodity position. If cross-margining arrangements have not been developed between the two markets, the firm may need to borrow funds temporarily to make the earlier payment. The rules on security interests in investment property would facilitate the use of positions in one market as collateral for loans needed to cover obligations in the other market.

7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction." The definition of "consumer goods" (discussed above) is substantially the same as the definition in former Section 9-109. The definitions of "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction." Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes," in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b). The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 for a far-flung public-utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. See Comment 9.b. A record may be created without the knowledge or intent of a particular person.

Like the terms "written" or "in writing," the term "record" does not establish the purposes, permitted uses, or legal effect that a record may have under any particular provision of law. Whatever is filed in the Article 9 filing system, including financing statements, continuation statements, and termination statements, whether transmitted in tangible or intangible form, would fall within the definition. However, in some instances, statutes or filing-office rules may require that a paper record be filed. In such cases, even if this Article permits the filing of an electronic record, compliance with those statutes or rules is necessary. Similarly, a filer must comply with a statute or rule that requires a particular type of encoding or formatting for an electronic record.

This Article sometimes uses the terms "for record," "of record," "record or legal title," and "record owner." Some of these are terms traditionally used in real-property law. The definition of "record" in this Article now explicitly excepts these usages from the defined term. Also, this Article refers to a record that is filed or recorded in real-property recording systems to record a mortgage as a "record of a mortgage." This usage recognizes that the defined term "mortgage" means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

b. "Authenticate"; "Communicate"; "Send." The terms "authenticate" and "authenticated" generally replace "sign" and "signed." "Authenticated" replaces and broadens the definition of "signed," in Section 1-201, to encompass authentication of all records, not just writings. (References to authentication of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms "communicate" and "send" also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The definition of "send" replaces, for purposes of this Article, the corresponding term in Section 1-201. The reference to "usual means of communication" in that definition contemplates an inquiry into the appropriateness of the method of transmission used in the particular circumstances involved.

10. Scope-Related Definitions.

a. Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment Intangible"; "Promissory Note." These new definitions reflect the expanded scope of Article 9, as provided in Section 9-109(a).

b. Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance Receivable"; "Commercial Tort Claims." These new definitions reflect the reduced scope of the exclusions, provided in Section 9-109(c) and (d), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Not every organization that may provide information about itself in the public records is a "registered organization." For example, a general partnership is not a "registered organization," even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name ("dba") certificate. This is because the State under whose law the partnership is organized is not required to maintain a public record showing that the partnership has been organized. In contrast, corporations, limited liability companies, and limited partnerships are "registered organizations."

12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank." The revised definition of "deposit account" incorporates the definition of "bank," which is new. The definition derives from the definitions of "bank" in Sections 4-105(1) and 4A-105(a)(2), which focus on whether the organization is "engaged in the business of banking."

Deposit accounts evidenced by Article 9 "instruments" are excluded from the term "deposit account." In contrast, former Section 9-105 excluded from the former definition "an account evidenced by a certificate of deposit." The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no

writing evidencing the bank's obligation to pay) whereas a nonnegotiable certificate of deposit would be a deposit account only if it is not an "instrument" as defined in this section (a question that turns on whether the nonnegotiable certificate of deposit is "of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.")

A deposit account evidenced by an instrument is subject to the rules applicable to instruments generally. As a consequence, a security interest in such an instrument cannot be perfected by "control" (see Section 9-104), and the special priority rules applicable to deposit accounts (see Sections 9-327 and 9-340) do not apply.

The term "deposit account" does not include "investment property," such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds"; "Proceeds." The revised definition of "proceeds" expands the definition beyond that contained in former Section 9-306 and resolves ambiguities in the former section.

a. Distributions on Account of Collateral. The phrase "whatever is collected on, or distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral. Compare former Section 9-306 ("Any payments or distributions made with respect to investment property collateral are proceeds."). This section rejects the holding of Hastie v. FDIC, 2 F.3d 1042 (10th Cir. 1993) (postpetition cash dividends on stock subject to a prepetition pledge are not "proceeds" under Bankruptcy Code Section 552(b)), to the extent the holding relies on the Article 9 definition of "proceeds."

b. Distributions on Account of Supporting Obligations. Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements ("supporting obligations," as defined in Section 9-102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

c. Proceeds of Proceeds. The definition of "proceeds" no longer provides that proceeds of proceeds are themselves proceeds. That idea is expressed in the revised definition of "collateral" in Section 9-102. No change in meaning is intended.

d. Proceeds Received by Person Who Did Not Create Security Interest. When collateral is sold subject to a security interest and the buyer then resells the collateral, a question arose under former Article 9 concerning whether the "debtor" had "received" what the buyer received on resale and, therefore, whether those receipts were "proceeds" under former Section 9-306(2). This Article contains no requirement that property be "received" by the debtor for the property to qualify as proceeds. It is necessary only that the property be traceable, directly or indirectly, to the original collateral.

e. Cash Proceeds and Noncash Proceeds. The definition of "cash proceeds" is substantially the same as the corresponding definition in former Section 9-306. The phrase "and the like" covers property that is functionally equivalent to "money, checks, or deposit accounts," such as some money-market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. Consignment-Related Definitions: "Consignee"; "Consignment"; "Consignor." The definition of "consignment" excludes, in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this Article by one of those subparagraphs may still be a true consignment; however, it is governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what have been called "consignments intended for security." These "consignments" are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. See Sections 1-201(b)(35), 9-109(a)(1). The "consignor" is the person who delivers goods to the "consignee" in a consignment.

The definition of "consignment" requires that the goods be delivered "to a merchant for the purpose of sale." If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is "sale." On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. "Accounting." This definition describes the record and information that a debtor is entitled to request under Section 9-210.

16. "Document." The definition of "document" incorporates both tangible and electronic documents of title. See Section 1-201(b)(16) and Comment 16.

17. "Encumbrance"; "Mortgage." The definitions of "encumbrance" and "mortgage" are unchanged in substance from the corresponding definitions in former Section 9-105. They

are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.

18. "Fixtures." This definition is unchanged in substance from the corresponding definition in former Section 9-313. See Section 9-334 (priority of security interests in fixtures and crops).

19. "Good Faith." This Article expands the definition of "good faith" to include "the observance of reasonable commercial standards of fair dealing." The definition in this section applies when the term is used in this Article, and the same concept applies in the context of this Article for purposes of the obligation of good faith imposed by Section 1-203. See subsection (c).

20. "Lien Creditor" This definition is unchanged in substance from the corresponding definition in former Section 9-301.

21. "New Value." This Article deletes former Section 9-108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of security interests in instruments, certificated securities, or negotiable documents under Section 9-312(e) and with respect to chattel paper priority in Section 9-330.

22. "Person Related To." Section 9-615 provides a special method for calculating a deficiency or surplus when "the secured party, a person related to the secured party, or a secondary obligor" acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in Section 1.301(32) of the Uniform Consumer Credit Code (1974).

23. "Proposal." This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622.

24. "Pursuant to Commitment." This definition is unchanged in substance from the corresponding definition in former Section 9-105. It is used in connection with special priority rules applicable to future advances. See Section 9-323.

25. "Software." The definition of "software" is used in connection with the priority rules applicable to purchase-money security interests. See Sections 9-103, 9-324. Software, like a payment intangible, is a type of general intangible for purposes of this Article. See Comment 4.a., above, regarding the distinction between "goods" and "software."

26. Terminology: "Assignment" and "Transfer." In numerous provisions, this Article refers to the "assignment" or the "transfer" of property interests. These terms and their derivatives are not defined. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see Section 9-107, Comment 4), no significance should be placed on the use of one term or the other. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

28-9-102. Definitions and index of definitions. [Effective July 1, 2013.] — (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance: (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or a person licensed or authorized to operate the game by a state or governmental

unit of a state. The term includes health care insurance receivables. The term does not include: (i) rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter of credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) with the intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(24) "Consumer goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which: (i) an individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 28-7-201(b), Idaho Code.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to section 28-9-519(a), Idaho Code.

(37) "Filing office" means an office designated in section 28-9-501, Idaho Code, as the place to file a financing statement.

(38) "Filing office rule" means a rule adopted pursuant to section 28-9-526, Idaho Code.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 28-9-502(a) and (b), Idaho Code. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
(44) "Goods" means all things that are movable when a security interest attaches. The term includes: (i) fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.
(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.
(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
(48) "Inventory" means goods, other than farm products, which:
(A) are leased by a person as lessor;
(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter of credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.

(54) "Manufactured home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under section 28-9-203(d), Idaho Code, by a security agreement previously entered into by another person.

(57) "New value" means: (i) money; (ii) money's worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in section 28-9-310(c), Idaho Code, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 28-9-203(d), Idaho Code.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) the spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

(64) "Proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 28-9-620, 28-9-621 and 28-9-622, Idaho Code.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and that is:

(A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) a record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 28-2-401, 28-2-505, 28-2-711(3), 28-4-210, 28-5-120 or 28-12-508(5), Idaho Code.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(b) "Control" as provided in section 28-7-106, Idaho Code, and the following definitions in other chapters apply to this chapter:

"Applicant"	section 28-5-102, Idaho Code.
"Beneficiary"	section 28-5-102, Idaho Code.
"Broker"	section 28-8-102, Idaho Code.
"Certificated security"	section 28-8-102, Idaho Code.
"Check"	section 28-3-104, Idaho Code.
"Clearing corporation"	section 28-8-102, Idaho Code.
"Contract for sale"	section 28-2-106, Idaho Code.
"Customer"	section 28-4-104, Idaho Code.
"Entitlement holder"	section 28-8-102, Idaho Code.
"Financial asset"	section 28-8-102, Idaho Code.
"Holder in due course"	section 28-3-302, Idaho Code.
"Issuer" (with respect to a letter of credit or letter of credit right)	section 28-5-102, Idaho Code.
"Issuer" (with respect to a security)	section 28-8-201, Idaho Code.
"Issuer" (with respect to documents of title)	section 28-7-102, Idaho Code.
"Lease"	section 28-12-103, Idaho Code.
"Lease agreement"	section 28-12-103, Idaho Code.
"Lease contract"	section 28-12-103, Idaho Code.
"Leasehold interest"	section 28-12-103, Idaho Code.
"Lessee"	section 28-12-103, Idaho Code.
"Lessee in ordinary course of business"	section 28-12-103, Idaho Code.
"Lessor"	section 28-12-103, Idaho Code.
"Lessor's residual interest"	section 28-12-103, Idaho Code.
"Letter of credit"	section 28-5-102, Idaho Code.
"Merchant"	section 28-2-104, Idaho Code.
"Negotiable instrument"	section 28-3-104, Idaho Code.
"Nominated person"	section 28-5-102, Idaho Code.
"Note"	section 28-3-104, Idaho Code.
"Proceeds of a letter of credit"	section 28-5-114, Idaho Code.
"Prove"	section 28-3-103, Idaho Code.
"Sale"	section 28-2-106, Idaho Code.
"Securities account"	section 28-8-501, Idaho Code.
"Securities intermediary"	section 28-8-102, Idaho Code.
"Security"	section 28-8-102, Idaho Code.
"Security certificate"	section 28-8-102, Idaho Code.
"Security entitlement"	section 28-8-102, Idaho Code.
"Uncertificated security"	section 28-8-102, Idaho Code.

(c) Chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.

I.C., § 28-9-102, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 1, p. 290; am. 2004, ch. 42, § 21, p. 77; am. 2012, ch. 145, § 1, p. 381.

Compiler's Notes. For this section as ef-

fective until July 1, 2013, see the preceding section, also numbered § 28-9-102.

The 2012 amendment, by ch. 145, rewrote paragraph (a)(7)(B) which formerly read: "to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record"; added the second sentence in paragraph (a)(10); added paragraph (a)(68), redesignating the subsequent paragraphs accordingly; and, in paragraph (a)(71), inserted "formed or" near the beginning, substituted "by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or United States" for "and as to which the state or the United States must maintain a public record showing the organization to have been organized", and added the last sentence.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-103. Purchase-money security interest — Application of payments — Burden of establishing.

Collateral References. Consignment transactions under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R. 6th 289.

28-9-105. Control of electronic chattel paper. [Effective July 1, 2013.] — (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) of this section, and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

History.

I.C., § 28-9-105, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 2, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, added subsection (a), designated the existing provisions of the section as subsection (b); added "A system satisfies subsection (a) of this section" at the beginning of the introduction paragraph in subsection (b); substituted "consent" for "participation" near the end of paragraph (b)(4); and made stylistic changes throughout.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-108. Sufficiency of description.

Cited in: Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

Description Sufficient.

Attorney's security interest in the promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The security agreement did not limit the types of proceeds to which the attorney's security interest would attach because the attorney identified specific proceeds in the security agreement, including any judgments arising out of a collection action; and a party who seeks to limit the type of statutory proceeds to which its security interest attaches must state an intent to limit proceeds in the security agreement. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

28-9-109. Scope. — (a) Except as otherwise provided in subsections (c) and (d), this chapter applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) A consignment;

(5) A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5), as provided in section 28-9-110; and

(6) A security interest arising under section 28-4-210 or 28-5-120.

(b) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(c) This chapter does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this chapter;

(2) Another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority or enforcement of a security interest created by the state, country or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 28-5-114.

(d) This chapter does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 28-9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 28-9-315 and 28-9-322 apply with respect to proceeds and priorities in proceeds;
(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
(10) A right of recoupment or set-off, but:
(A) section 28-9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
(B) section 28-9-404 applies with respect to defenses or claims of an account debtor;
(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
(A) liens on real property in sections 28-9-203 and 28-9-308;
(B) fixtures in section 28-9-334;
(C) fixture filings in sections 28-9-501, 28-9-502, 28-9-512, 28-9-516 and 28-9-519; and
(D) security agreements covering personal and real property in section 28-9-604;
(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 28-9-315 and 28-9-322 apply with respect to proceeds and priorities in proceeds;
(13)(A) A claim or right to receive compensation for injuries or sickness as described in (i) 26 U.S.C. section 104(a)(1) and (ii) on and after the effective date of this chapter, in 26 U.S.C. section 104(a)(2), as those sections may be amended from time to time. Notwithstanding the foregoing, this chapter (other than sections 28-9-406(d) and 28-9-408(a) and (c), Idaho Code, in the case of transfers made on and after the effective date of this chapter) shall apply to such compensation as described in 26 U.S.C. section 104(a)(2) if the sale, pledge, assignment or other transfer of rights to receive such compensation under a structured settlement is approved by the final order of a court pursuant to, and otherwise complies with, the requirements of paragraph (B) of this subsection.
(B)(i) Definitions. For purposes of this subsection:
1. "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;
2. "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;
3. "discounted present value" means the present value of future payments determined by discounting such payments to the present

using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service;

4. "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

5. "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

6. "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

7. "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under paragraph (B)(ii)5. of this subsection;

8. "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

9. "periodic payments" includes both recurring payments and scheduled future lump sum payments;

10. "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of 26 U.S.C. section 130, as amended from time to time;

11. "settled claim" means the original tort claim resolved by a structured settlement;

12. "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim;

13. "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

14. "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

15. "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

A. the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state; or

B. the structured settlement agreement was approved by a court in this state; or

C. the structured settlement agreement is expressly governed by the laws of this state;

16. "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other government authority that authorized or approved such structured settlement;

17. "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

18. "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights;

19. "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney's fees, escrow fees, lien recordation fees, judgment and lien search fees, finder's fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

20. "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

(ii) Required disclosures to payee. Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen (14) points, setting forth:

1. the amounts and due dates of the structured settlement payments to be transferred;

2. the aggregate amount of such payments;

3. the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the applicable federal rate used in calculating such discounted present value;

4. the gross advance amount;

5. an itemized listing of all applicable transfer expenses, other than attorney's fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

6. the net advance amount;

7. the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

8. a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

(iii) Approval of transfers of structured settlement payment rights.

1. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

A. the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

B. the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

C. the transfer does not contravene any applicable statute or the order of any court or other government authority.

(iv) Effects of transfer of structured settlement payment rights. Following a transfer of structured settlement payment rights under this subsection:

1. The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

A. if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

B. for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subsection;

3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (2) or more transferees or assignees; and

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subsection.

(v) Procedure for approval of transfers.

1. An application under this subsection for approval of a transfer of structured settlement payment rights shall be made by the trans-

feree and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.

2. Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under paragraph (B)(iii) of this subsection, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

A. a copy of the transferee's application;

B. a copy of the transfer agreement;

C. a copy of the disclosure statement required under paragraph (B)(ii) of this subsection;

D. a listing of each of the payee's dependents, together with each dependent's age;

E. notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

F. notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than fifteen (15) days after service of the transferee's notice) in order to be considered by the court.

(vi) General provisions—construction.

1. The provisions of this subsection may not be waived by any payee.

2. Any transfer agreement entered into on or after the effective date of this subsection by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

3. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

4. No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the

proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subsection.

5. Nothing contained in this subsection shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this subsection is valid or invalid.

6. Compliance with the requirements set forth in paragraph (B)(ii) of this subsection and fulfillment of the conditions set forth in paragraph (B)(iii) of this subsection shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.

(vii) Effective date. This subsection shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the thirtieth day after the date of enactment of this subsection; provided however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective; or

(14) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. section 1396p(d)(4), as amended from time to time.

History.

I.C., § 28-9-109, as added by 2001, ch. 208, § 2, p. 704; am. 2001, ch. 299, § 1, p. 1078.

Compiler's Notes. This section is set out above to correct an error appearing in subdivision (d)(13)(B)(i)5. in the bound volume.

Cited in: Wiggins v. Peachtree Settlement Funding, 273 Bankr. 839 (Bankr. D. Idaho 2001).

ANALYSIS

Assignment of structured settlement rights.
Security interest.

Assignment of Structured Settlement Rights.

Subsection (d)(13)(B)(v), "Structured Settlement Protection Act" does not affect transfer agreements reached prior to its enactment; thus, a settlement payee's purported assignment of a payment transferred nothing, notwithstanding court approval of the assignment, because the payee had previously assigned the payment to another party and, thus, had lost control of the payment. Foley v. Grigg, 144 Idaho 530, 164 P.3d 810 (2007).

Security Interest.

Attorney's security interest in the promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The attorney identified specific proceeds in the security agreement, including any judgments arising out of a collection action; and a party who seeks to limit the type of statutory proceeds to which its security interest attaches must state an intent to limit proceeds in the security agreement. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

Collateral References. Consignment transactions under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R. 6th 289.

28-9-110. Security interests arising under chapter 2 or 12, title 28, Idaho code.

Description Sufficient.

Attorney's security interest in the promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The attorney identified specific proceeds in the security agreement, including any judgments arising out of a collection action, and a party who seeks to limit the type of statutory proceeds to which its security interest attaches must state an intent to

limit proceeds in the security agreement. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

PART 2. EFFECTIVENESS OF SECURITY AGREEMENT — ATTACHMENT OF SECURITY INTEREST — RIGHTS OF PARTIES TO SECURITY AGREEMENT

28-9-203. Attachment and enforceability of security interest — Proceeds — Supporting obligations — Formal requisites. — (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One (1) of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 28-9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 28-8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter of credit rights, or electronic documents, and the secured party has control under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) of this section is subject to section 28-4-210 on the security interest of a collecting bank, section 28-5-120 on the security interest of a letter of credit issuer or nominated person, section 28-9-110 on a security interest arising under chapter 2 or 12, title 28, and section 28-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 28-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

History.

I.C., § 28-9-203, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 22, p. 77.

Compiler's Notes. Sections 21 and 23 of S.L. 2004, ch. 42 are compiled as §§ 28-9-102 and 28-9-207, respectively.

Cited in: State v. Bennett, 150 Idaho 278, 246 P.3d 387 (2010).

ANALYSIS

Creation of security interest.
Valid secured interest.

Creation of Security Interest.

Attorney's security interest in the promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The security agreement did not limit the types of proceeds to which the attorney's security interest would attach because the attorney identified specific proceeds in the security agreement. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

Valid Secured Interest.

In Chapter 7 proceedings, since there was no written loan agreement between the debor and her creditor father, there was no perfected security interest which could be avoided by the bankruptcy trustee, and thus debtor was entitled to a $3800 exemption from proceeds of the sale of her vehicle. In re Seibold, 351 B.R. 741 (Bankr. D. Idaho 2006).

In adversary proceeding subsequent to closing of bankruptcy case, debtor was not entitled to declaration that creditor was not the lienholder on three vehicles. Though the certificates of title were ambiguous, the balance of the evidence established that the debtor intended the vehicles to be security for his debt to the creditor, as evidenced by three separate IOUs, and the perfected liens passed through bankruptcy unaffected by debtor's discharge. Owen v. Lundstrom (In re Owen), 349 B.R. 66 (Bankr. D. Idaho 2006).

OFFICIAL COMMENT

1. Source. Former Sections 9-203, 9-115(2), (6).

2. Creation, Attachment, and Enforceability. Subsection (a) states the general rule that a security interest attaches to collateral only when it becomes enforceable against the debtor. Subsection (b) specifies the circumstances under which a security interest becomes enforceable. Subsection (b) states three basic prerequisites to the existence of a security interest: value (paragraph (1)), rights or power to transfer rights in collateral (paragraph (2)), and agreement plus satisfaction of an evidentiary requirement (paragraph (3)). When all of these elements exist, a security interest becomes enforceable between the parties and attaches under subsection (a). Subsection (c) identifies certain exceptions to the general rule of subsection (b).

3. Security Agreement; Authentication. Under subsection (b)(3), enforceability requires the debtor's security agreement and

compliance with an evidentiary requirement in the nature of a Statute of Frauds. Paragraph (3)(A) represents the most basic of the evidentiary alternatives, under which the debtor must authenticate a security agreement that provides a description of the collateral. Under Section 9-102, a "security agreement" is "an agreement that creates or provides for a security interest." Neither that definition nor the requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown in fact to have been given as security. Under this Article, as under prior law, a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security. Similarly, a self-styled "lease" may serve as a security agreement if the agreement creates a security interest. See Section 1-201(37) (distinguishing security interest from lease).

4. Possession, Delivery, or Control Pursuant to Security Agreement. The other alternatives in subsection (b)(3) dispense with the requirement of an authenticated security agreement and provide alternative evidentiary tests. Under paragraph (3)(B), the secured party's possession substitutes for the debtor's authentication under paragraph (3)(A) if the secured party's possession is "pursuant to the debtor's security agreement." That phrase refers to the debtor's agreement to the secured party's possession for the purpose of creating a security interest. The phrase should not be confused with the phrase "debtor has authenticated a security agreement," used in paragraph (3)(A), which contemplates the debtor's authentication of a record. In the unlikely event that possession is obtained without the debtor's agreement, possession would not suffice as a substitute for an authenticated security agreement. However, once the security interest has become enforceable and has attached, it is not impaired by the fact that the secured party's possession is maintained without the agreement of a subsequent debtor (e.g., a transferee). Possession as contemplated by Section 9-313 is possession for purposes of subsection (b)(3)(B), even though it may not constitute possession "pursuant to the debtor's agreement" and consequently might not serve as a substitute for an authenticated security agreement under subsection (b)(3)(A). Subsection (b)(3)(C) provides that delivery of a certificated security to the secured party under Section 8-301 pursuant to the debtor's security agreement is sufficient as a substitute for an authenticated security agreement. Similarly, under subsection (b)(3)(D), control of investment property, a deposit account, electronic chattel paper, a letter-of-credit right, or electronic documents satisfies the evidentiary test if control is pursuant to the debtor's security agreement.

5. Collateral Covered by Other Statute or Treaty. One evidentiary purpose of the formal requisites stated in subsection (b) is to minimize the possibility of future disputes as to the terms of a security agreement (e.g., as to the property that stands as collateral for the obligation secured). One should distinguish the evidentiary functions of the formal requisites of attachment and enforceability (such as the requirement that a security agreement contain a description of the collateral) from the more limited goals of "notice filing" for financing statements under Part 5, explained in Section 9-502, Comment 2. When perfection is achieved by compliance with the requirements of a statute or treaty described in Section 9-311(a), such as a federal recording act or a certificate-of-title statute, the manner of describing the collateral in a registry imposed by the statute or treaty may or may not be adequate for purposes of this section and Section 9-108. However, the description contained in the security agreement, not the description in a public registry or on a certificate of title, controls for purposes of this section.

6. Debtor's Rights; Debtor's Power to Transfer Rights. Subsection (b)(2) conditions attachment on the debtor's having "rights in the collateral or the power to transfer rights in the collateral to a secured party." A debtor's limited rights in collateral, short of full ownership, are sufficient for a security interest to attach. However, in accordance with basic personal property conveyancing principles, the baseline rule is that a security interest attaches only to whatever rights a debtor may have, broad or limited as those rights may be.

Certain exceptions to the baseline rule enable a debtor to transfer, and a security interest to attach to, greater rights than the debtor has. See Part 3, Subpart 3 (priority rules). The phrase, "or the power to transfer rights in the collateral to a secured party," accommodates those exceptions. In some cases, a debtor may have power to transfer another person's rights only to a class of transferees that excludes secured parties. See, e.g., Section 2-403(2) (giving certain merchants power to transfer an entruster's rights to a buyer in ordinary course of business). Under those circumstances, the debtor would not have the power to create a security interest in the other person's rights, and the condition in subsection (b)(2) would not be satisfied.

7. New Debtors. Subsection (e) makes clear that the enforceability requirements of subsection (b)(3) are met when a new debtor becomes bound under an original debtor's security agreement. If a new debtor becomes bound as debtor by a security agreement

entered into by another person, the security agreement satisfies the requirement of subsection (b)(3) as to the existing and after-acquired property of the new debtor to the extent the property is described in the agreement.

Subsection (d) explains when a new debtor becomes bound. Persons who become bound under paragraph (2) are limited to those who both become primarily liable for the original debtor's obligations and succeed to (or acquire) its assets. Thus, the paragraph excludes sureties and other secondary obligors as well as persons who become obligated through veil piercing and other non-successorship doctrines. In many cases, paragraph (2) will exclude successors to the assets and liabilities of a division of a debtor. See also Section 9-508, Comment 3.

8. Supporting Obligations. Under subsection (f), a security interest in a "supporting obligation" (defined in Section 9-102) automatically follows from a security interest in the underlying, supported collateral. This result was implicit under former Article 9. Implicit in subsection (f) is the principle that the secured party's interest in a supporting obligation extends to the supporting obligation only to the extent that it supports the collateral in which the secured party has a security interest. Complex issues may arise, however, if a supporting obligation supports many separate obligations of a particular account debtor and if the supported obligations are separately assigned as security to several secured parties. The problems may be exacerbated if a supporting obligation is limited to an aggregate amount that is less than the aggregate amount of the obligations it supports. This Article does not contain provisions dealing with competing claims to a limited supporting obligation. As under former Article 9, the law of suretyship and the agreements of the parties will control.

9. Collateral Follows Right to Payment or Performance. Subsection (g) codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien. See Restatement (3d), Property (Mortgages) § 5.4(a) (1997). See also Section 9-308(e) (analogous rule for perfection).

10. Investment Property. Subsections (h) and (i) make clear that attachment of a security interest in a securities account or commodity account is also attachment in security entitlements or commodity contracts carried in the accounts.

28-9-207. Rights and duties of secured party having possession or control of collateral. — (a) Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

History. I.C., § 28-9-207, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 23, p. 77.

Compiler's Notes. Section 22 of S.L. 2004, ch. 42 is compiled as § 28-9-203.

28-9-208. Additional duties of secured party having control of collateral. — (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 28-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 28-9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 28-9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which

add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 28-8-106(4)(b) or 28-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter of credit right under section 28-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

History.
I.C., § 28-9-208, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 24, p. 77.

Compiler's Notes. Section 25 of S.L. 2004, ch. 42 is compiled as § 28-9-301.

OFFICIAL COMMENT

1. Source. New.

2. Scope and Purpose. This section imposes duties on a secured party who has control of a deposit account, electronic chattel paper, investment property, a letter-of-credit right, or electronic documents of title. The duty to terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 9-513. Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement under Section 1-102(3). For example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to the debtor or put them in an account in the debtor's name.

3. Remedy for Failure to Relinquish Control. If a secured party fails to comply with the requirements of subsection (b), the debtor has the remedy set forth in Section 9-625(e). This remedy is identical to that applicable to failure to provide or file a termination statement under Section 9-513.

4. Duty to Relinquish Possession. Although Section 9-207 addresses directly the duties of a secured party in possession of collateral, that section does not require the secured

party to relinquish possession when the secured party ceases to hold a security interest. Under common law, absent agreement to the contrary, the failure to relinquish possession of collateral upon satisfaction of the secured obligation would constitute a conversion. Inasmuch as problems apparently have not surfaced in the absence of statutory duties under former Article 9 and the common-law duty appears to have been sufficient, this Article does not impose a statutory duty to relinquish possession.

Part 3. Perfection and Priority

28-9-301. Law governing perfection and priority of security interests. — Except as otherwise provided in sections 28-9-303 through 28-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

History.
I.C., § 28-9-301, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 25, p. 77.

Compiler's Notes. Sections 24 and 26 of S.L. 2004, ch. 42 are compiled as §§ 28-9-208 and 28-9-310, respectively.

OFFICIAL COMMENT

1. Source. Former Sections 9-103(1)(a), (b), 9-103(3)(a), (b), 9-103(5), substantially modified.

2. Scope of This Subpart. Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or nonperfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in Section 1-105; that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3.

3. Scope of Referral. In designating the jurisdiction whose law governs, this Article directs the court to apply only the substantive ("local") law of a particular jurisdiction and not its choice-of-law rules.

Example 1: Litigation over the priority of a security interest in accounts arises in State X. State X has adopted the official text of this Article, which provides that priority is determined by the local law of the jurisdiction in which the debtor is located. See Section 9-301(1). The debtor is located in State Y. Even if State Y has retained former Article 9 or enacted a nonuniform choice-of-law rule (e.g., one that provides that perfection is governed by the law of State Z), a State X court should look only to the substantive law of State Y and disregard State Y's choice-of-law rule. State Y's substantive law (e.g., its Section 9-501) provides that financing statements should be filed in a filing office in State Y. Note, however, that if the identical perfection issue were to be litigated in State Y, the court would look to State Y's former Section 9-103 or nonuniform 9-301 and conclude that a filing in State Y is ineffective.

Example 2: In the preceding Example, assume that State X has adopted the official text of this Article, and State Y has adopted a nonuniform Section 9-301(1) under which perfection is governed by the whole law of State X, including its choice-of-law rules. If litigation occurs in State X, the court should look to the substantive law of State Y, which provides that financing statements are to be filed in a filing office in State Y. If litigation occurs in State Y, the court should look to the law of State X, whose choice-of-law rule requires that the court apply the substantive law of State Y. Thus, regardless of the jurisdiction in which the litigation arises, the financing statement should be filed in State Y.

4. Law Governing Perfection: General Rule. Paragraph (1) contains the general rule: the law governing perfection of security interests in both tangible and intangible collateral, whether perfected by filing or automatically, is the law of the jurisdiction of the debtor's location, as determined under Section 9-307.

Paragraph (1) substantially simplifies the choice-of-law rules. Former Section 9-103 contained different choice-of-law rules for different types of collateral. Under Section 9-301(1), the law of a single jurisdiction governs perfection with respect to most types of collateral, both tangible and intangible. Paragraph (1) eliminates the need for former Section 9-103(1)(c), which concerned purchase-money security interests in tangible collateral that is intended to move from one jurisdiction to the other. It is likely to reduce the frequency of cases in which the governing law changes after a financing statement is properly filed. (Presumably, debtors change their own location less frequently than they change the location of their collateral.) The approach taken in paragraph (1) also eliminates some difficult priority issues and the need to distinguish between "mobile" and "ordinary" goods, and it reduces the number of filing offices in which secured parties must file or search when collateral is located in several jurisdictions.

5. Law Governing Perfection: Exceptions. The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

a. Possessory Security Interests. Paragraph (2) applies to possessory security interests and provides that perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former Section 9-103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

The distinction between nonpossessory and possessory security interests creates the potential for the same jurisdiction to apply two different choice-of-law rules to determine perfection in the same collateral. For example, were a secured party in possession of an instrument or a tangible document to relinquish possession in reliance on temporary perfection, the applicable law immediately would change from that of the location of the collateral to that of the location of the debtor. The applicability of two different choice-of-law rules for perfection is unlikely to lead to any material practical problems. The perfection rules of one Article 9 jurisdiction are likely to be identical to those of another. Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by reference to the law of the jurisdiction in which the collateral is located, regardless of how the security interests are perfected.

b. Fixtures. Application of the general rule in paragraph (1) to perfection of a security interest in fixtures would yield strange results. For example, perfection of a security interest in fixtures located in Arizona and owned by a Delaware corporation would be governed by the law of Delaware. Although Delaware law would send one to a filing office in Arizona for the place to file a financing

statement as a fixture filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-property filing and recording requirements that Arizona law might impose. For this reason, paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures are "goods" as defined in Section 9-102.

c. Timber to Be Cut. Application of the general rule in paragraph (1) to perfection of a security interest in timber to be cut would yield undesirable results analogous to those described with respect to fixtures. Paragraph (3)(B) adopts a similar solution: perfection is governed by the law of the jurisdiction in which the timber is located. As with fixtures, under paragraph (3)(C), the same law governs priority. Timber to be cut also is "goods" as defined in Section 9-102.

Paragraph (3)(B) applies only to "timber to be cut," not to timber that has been cut. Consequently, once the timber is cut, the general choice-of-law rule in paragraph (1) becomes applicable. To ensure continued perfection, a secured party should file in both the jurisdiction in which the timber to be cut is located and in the state where the debtor is located. The former filing would be with the office in which a real property mortgage would be filed, and the latter would be a central filing. See Section 9-501.

d. As-Extracted Collateral. Paragraph (4) adopts the rule of former Section 9-103(5) with respect to certain security interests in minerals and related accounts. Like security interests in fixtures perfected by filing a fixture filing, security interests in minerals that are as-extracted collateral are perfected by filing in the office designated for the filing or recording of a mortgage on the real property. For the same reasons, the law governing perfection and priority is the law of the jurisdiction in which the wellhead or minehead is located.

6. Change in Law Governing Perfection. When the debtor changes its location to another jurisdiction, the jurisdiction whose law governs perfection under paragraph (1) changes, as well. Similarly, the law governing perfection of a possessory security interest in collateral under paragraph (2) changes when the collateral is removed to another jurisdiction. Nevertheless, these changes will not result in an immediate loss of perfection. See Section 9-316(a), (b).

7. Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable Documents, and Tangible Chattel Paper. Under former Section 9-103, the law of a single jurisdiction governed both questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

To address this problem, paragraph (3)(C) divorces questions of perfection from questions of "the effect of perfection or nonperfection and the priority of a security interest." Under paragraph (3)(C), the rights of competing claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located. A similar bifurcation applied to security interests in investment property under former Section 9-103(6). See Section 9-305.

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former Section 9-103(1), which applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed to "mobile") goods. This Article does not distinguish among types of goods. The ordinary obile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

Particularly serious confusion may arise when the choice-of-law rules of a given jurisdiction result in each of two competing security interests in the same collateral being governed by a different priority rule. The potential for this confusion existed under former Section 9-103(4) with respect to chattel paper: Perfection by possession was governed by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the debtor. Consider the mess that would have been created if the language or interpretation of former Section 9-308 were to differ in the two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted Article 9. The potential for confusion could have been exacerbated when a secured party perfected both by taking possession in the State where the collateral is located (State A) and by filing in the State where the debtor is located (State B)—a common practice for some chattel paper financers. By providing that the law of the jurisdiction in which the

collateral is located governs priority, paragraph (3) substantially diminishes this problem.

8. Non-U.S. Debtors. This Article applies the same choice-of-law rules to all debtors, foreign and domestic. For example, it adopts the bifurcated approach for determining the law applicable to security interests in goods and other tangible collateral. See Comment 5.a., above. The Article contains a new rule specifying the location of non-U.S. debtors for purposes of this Part. The rule appears in Section 9-307 and is explained in the Reporters' Comments following that section. Former Section 9-103(3)(c), which contained a special choice-of-law rule governing security interests created by debtors located in a non-U.S. jurisdiction, proved unsatisfactory and was deleted.

28-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

Choice of Law.

Under subsection (b), Chapter 7 debtors' vehicle ceased to be covered by a California certificate of title and became covered by the Idaho certificate of title laws at the time the application for an Idaho title was tendered; Idaho law, therefore, determined whether a creditor's security interest was perfected prior to the 11 U.S.C.S. § 547 preference period. Gugino v. Wachovia Dealer Servs. (In re Owen), 2009 Bankr. LEXIS 3318 (Bankr. D. Idaho July 15, 2009).

28-9-304. Law governing perfection and priority of security interests in deposit accounts. — (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or the uniform commercial code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

History.

I.C., § 28-9-304, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 2, p. 290.

Compiler's Notes. Sections 1 and 3 of S.L. 2002, ch. 107 are compiled as §§ 28-9-102 and 28-9-309, respectively.

28-9-307. Location of debtor. [Effective July 1, 2013.] — (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch or agency to designate its state of location, including by designating its main office, home office or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) of this subsection applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) A foreign air carrier under the federal aviation act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

History.
I.C., § 28-9-307, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 3, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, inserted "including by designating its main office, home office or other comparable office" in paragraph (f)(2).

The federal aviation act of 1958, referred to in subsection (j), is codified as 49 U.S.C.S. § 40101 et seq.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-309. Security interest perfected upon attachment. — The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 28-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 28-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;

(6) A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under section 28-4-210;

(8) A security interest of an issuer or nominated person arising under section 28-5-120;

(9) A security interest arising in the delivery of a financial asset under section 28-9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

History.
I.C., § 28-9-309, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 3, p. 290.

Compiler's Notes. Sections 2 and 4 of S.L. 2002, ch. 107 are compiled as §§ 28-9-304 and 28-9-515, respectively.

Collateral References. Creation and perfection of security interests in insurance proceeds under Article 9 of Uniform Commercial Code. 47 A.L.R.6th 347.

28-9-310. When filing required to perfect security interest or agricultural lien — Security interests and agricultural liens to which filing provisions do not apply. — (a) Except as otherwise provided in subsection (b) of this section and section 28-9-312(b), a financing

statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 28-9-308(d), (e), (f) or (g);

(2) That is perfected under section 28-9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 28-9-311(a);

(4) In goods in possession of a bailee which is perfected under section 28-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing, control, or possession under section 28-9-312(e), (f) or (g);

(6) In collateral in the secured party's possession under section 28-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 28-9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter of credit rights which is perfected by control under section 28-9-314;

(9) In proceeds which is perfected under section 28-9-315;

(10) That is perfected under section 28-9-316; or

(11) In timber sold by the state of Idaho.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

History.

I.C., § 28-9-310, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 26, p. 77; am. 2010, ch. 154, § 1, p. 329.

Compiler's Notes. Sections 25 and 27 of S.L. 2004, ch. 42 are compiled as §§ 28-9-301 and 28-9-312, respectively.

The 2010 amendment, by ch. 154, added paragraph (b)(11).

28-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties. [Effective until July 1, 2013.]

Automobiles.

A security interest in an automobile is perfected under §§ 49-504 and 49-510, not this section. Gugino v. GMAC (In re Laursen), 391 B.R. 47 (Bankr. D. Idaho 2008).

28-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties. [Effective July 1, 2013.] — (a) Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 28-9-310(a), Idaho Code;

(2) Section 49-510, Idaho Code; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d) of this section and sections 28-9-313 and 28-9-316(d) and (e), Idaho Code, for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) of this section and section 28-9-316(d) and (e), Idaho Code, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (a) of this section are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this chapter.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

History.

I.C., § 28-9-311, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 4, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, substituted "A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition" for "A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition" in paragraph (a)(3).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter of credit rights and money — Perfection by permissive filing — Temporary perfection without filing or transfer of possession. — (a) A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Except as otherwise provided in section 28-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 28-9-314;

(2) And except as otherwise provided in section 28-9-308(d), a security interest in a letter of credit right may be perfected only by control under section 28-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 28-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this chapter.

History.
I.C., § 28-9-312, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 27, p. 77.

Compiler's Notes. Section 26 of S.L. 2004, ch. 42 is compiled as § 28-9-310.

Collateral References. Perfection of security interests by possession, delivery, or control under revised article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

OFFICIAL COMMENT

1. Source. Former Section 9-304, with additions and some changes.

2. Instruments. Under subsection (a), a security interest in instruments may be perfected by filing. This rule represents an important change from former Article 9, under which the secured party's taking possession of an instrument was the only method of achieving long-term perfection. The rule is likely to be particularly useful in transactions involv-

ing a large number of notes that a debtor uses as collateral but continues to collect from the makers. A security interest perfected by filing is subject to defeat by certain subsequent purchasers (including secured parties). Under Section 9-330(d), purchasers for value who take possession of an instrument without knowledge that the purchase violates the rights of the secured party generally would achieve priority over a security interest in the instrument perfected by filing. In addition, Section 9-331 provides that filing a financing statement does not constitute notice that would preclude a subsequent purchaser from becoming a holder in due course and taking free of all claims under Section 3-306.

3. Chattel Paper; Negotiable Documents. Subsection (a) further provides that filing is available as a method of perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes delivered to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (a) allows the assignee to perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking possession. See Section 9-313(a). An assignee of electronic chattel paper may perfect by taking control. See Sections 9-314(a), 9-105. The security interest of an assignee who takes possession or control may qualify for priority over a competing security interest perfected by filing. See Section 9-330.

Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section 1-201 (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel paper, a security interest in a negotiable document may be perfected by filing.

4. Investment Property. A security interest in investment property, including certificated securities, uncertificated securities, security entitlements, and securities accounts, may be perfected by filing. However, security interests created by brokers, securities intermediaries, or commodity intermediaries are automatically perfected; filing is of no effect. See Section 9-309(10), (11). A security interest in all kinds of investment property also may be perfected by control, see Sections 9-314, 9-106, and a security interest in a certificated security also may be perfected by the secured party's taking delivery under Section 8-301. See Section 9-313(a). A security interest perfected only by filing is subordinate to a conflicting security interest perfected by control or delivery. See Section 9-328(1), (5). Thus, although filing is a permissible method of perfection, a secured party who perfects by filing takes the risk that the debtor has granted or will grant a security interest in the same collateral to another party who obtains control. Also, perfection by filing would not give the secured party protection against other types of adverse claims, since the Article 8 adverse claim cut-off rules require control. See Section 8-510.

5. Deposit Accounts. Under new subsection (b)(1), the only method of perfecting a security interest in a deposit account as original collateral is by control. Filing is ineffective, except as provided in Section 9-315 with respect to proceeds. As explained in Section 9-104, "control" can arise as a result of an agreement among the secured party, debtor, and bank, whereby the bank agrees to comply with instructions of the secured party with respect to disposition of the funds on deposit, even though the debtor retains the right to direct disposition of the funds. Thus, subsection (b)(1) takes an intermediate position between certain non-UCC law, which conditions the effectiveness of a security interest on the secured party's enjoyment of such dominion and control over the deposit account that the debtor is unable to dispose of the funds, and the approach this Article takes to securities accounts, under which a secured party who is unable to reach the collateral without resort to judicial process may perfect by filing. By conditioning perfection on "control," rather than requiring the secured party to enjoy absolute dominion to the exclusion of the debtor, subsection (b)(1) permits perfection in a wide variety of transactions, including those in which the secured party actually relies on the deposit account in extending credit and maintains some meaningful dominion over it, but does not wish to deprive the debtor of access to the funds altogether.

6. Letter-of-Credit Rights. Letter-of-credit rights commonly are "supporting obligations," as defined in Section 9-102. Perfection as to the related account, chattel paper, document, general intangible, instrument, or investment property will perfect as to the letter-of-credit rights. See Section 9-308(d). Subsection (b)(2) provides that, in other cases, a security interest in a letter-of-credit right may be perfected only by control. "Control," for these purposes, is explained in Section 9-107.

7. Goods Covered by Document of Title. Subsection (c) applies to goods in the possession of a bailee who has issued a negotiable document covering the goods. Subsection (d) applies to goods in the possession of a bailee who has issued a nonnegotiable document of title, including a document of title that is "non-negotiable" under Section 7-104. Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a document of title.

Subsection (c) clarifies the perfection and priority rules in former Section 9-304(2). Consistently with the provisions of Article 7, subsection (c) takes the position that, as long as a negotiable document covering goods is outstanding, title to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered by a negotiable document may be perfected by perfecting a security interest in the document. The security interest also may be perfected by another method, e.g., by filing. The priority rule in subsection (c) governs only priority between (i) a security interest in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which becomes perfected by another method while the goods are covered by the document.

Example 1: While wheat is in a grain elevator and covered by a negotiable warehouse receipt, Debtor creates a security interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects by filing a financing statement covering "wheat." Thereafter, SP-2 perfects by filing a financing statement describing the warehouse receipt. Subsection (c)(1) provides that SP-2's security interest is perfected. Subsection (c)(2) provides that SP-2's security interest is senior to SP-1's.

Example 2: The facts are as in Example 1, but SP-1's security interest attached and was perfected before the goods were delivered to the grain elevator. Subsection (c)(2) does not apply, because SP-1's security interest did not become perfected during the time that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect priority rule applies. See Sections 9-322 and 7-503.

A secured party may become "a holder to whom a negotiable document of title has been duly negotiated" under Section 7-501. If so, the secured party acquires the rights specified by Article 7. Article 9 does not limit those rights, which may include the right to priority over an earlier-perfected security interest. See Section 9-331(a).

Subsection (d) takes a different approach to the problem of goods covered by a nonnegotiable document. Here, title to the goods is not looked on as being locked up in the document, and the secured party may perfect its security interest directly in the goods by filing as to them. The subsection provides two other methods of perfection: issuance of the document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would be made under a non-negotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee. Perfection under subsection (d) occurs when the bailee receives notification of the secured party's interest in the goods, regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee responds. Unlike former Section 9-304(3), from which it derives, subsection (d) does not apply to goods in the possession of a bailee who has not issued a document of title. Section 9-313(c) covers that case and provides that perfection by possession as to goods not covered by a document requires the bailee's acknowledgment.

8. Temporary Perfection Without Having First Otherwise Perfected. Subsection (e) follows former Section 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents for a short period (reduced from 21 to 20 days, which is the time period generally applicable in this Article), although there has been no filing and the collateral is in the debtor's possession or control. The 20-day temporary perfection runs from the date of attachment. There is no limitation on the purpose for which the debtor is in possession, but the secured party must have given "new value" (defined in Section 9-102) under an authenticated security agreement.

9. Maintaining Perfection After Surrendering Possession. There are a variety of legitimate reasons-many of them are described in subsections (f) and (g)—why certain types of collateral must be released temporarily to a debtor. No useful purpose would be served by cluttering the files with records of such exceedingly short term transactions.

Subsection (f) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of a bailee but not covered by a negotiable document. Subsection (g) provides for 20-day perfection in certificated securities and instruments. These subsections derive from former Section 9-305(5). However, the period of temporary perfection has been reduced from 21 to 20 days, which is the time period generally applicable in this Article, and "enforcement" has been added in subsection (g) as one of the special and limited purposes for which a secured party can release an instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no new value requirement, but the turnover must be for one or more of the purposes stated in subsection (f) or (g). The 20-day period may be extended by perfecting as to the collateral by another method before the period expires. However, if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during which the security interest is unperfected.

Temporary perfection extends only to the negotiable document or goods under subsection (f) and only to the certificated security or

instrument under subsection (g). It does not extend to proceeds. If the collateral is sold, the security interest will continue in the proceeds for the period specified in Section 9-315.

Subsections (f) and (g) deal only with perfection. Other sections of this Article govern the priority of a security interest in goods after surrender of possession or control of the document covering them. In the case of a purchase-money security interest in inventory, priority may be conditioned upon giving notification to a prior inventory financer. See Section 9-324.

28-9-313. When possession by or delivery to secured party perfects security interest without filing. — (a) Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 28-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 28-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 28-8-301, and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or section 28-8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees, or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the

debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees, or law other than this chapter otherwise provides.

History.

I.C., § 28-9-313, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 28, p. 77.

Collateral References. Perfection of security interests by possession, delivery, or control under revised article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

OFFICIAL COMMENT

1. Source. Former Sections 9-305, 9-115(6).

2. Perfection by Possession. As under the common law of pledge, no filing is required by this Article to perfect a security interest if the secured party takes possession of the collateral. See Section 9-310(b)(6).

This section permits a security interest to be perfected by the taking of possession only when the collateral is goods, instruments, tangible negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit accounts, investment property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction are excluded. (But see Comment 6, below, regarding certificated securities.) A security interest in accounts and payment intangibles—property not ordinarily represented by any writing whose delivery operates to transfer the right to payment—may under this Article be perfected only by filing. This rule would not be affected by the fact that a security agreement or other record described the assignment of such collateral as a "pledge." Section 9-309(2) exempts from filing certain assignments of accounts or payment intangibles which are out of the ordinary course of financing. These exempted assignments are perfected when they attach. Similarly, under Section 9-309(3), sales of payment intangibles are automatically perfected.

3. "Possession." This section does not define "possession." It adopts the general concept as it developed under former Article 9. As under former Article 9, in determining whether a particular person has possession, the principles of agency apply. For example, if the collateral is in possession of an agent of the secured party for the purposes of possessing on behalf of the secured party, and if the agent is not also an agent of the debtor, the secured party has taken actual possession, and subsection (c) does not apply. Sometimes a person holds collateral both as an agent of the secured party and as an agent of the debtor. The fact of dual agency is not of itself inconsistent with the secured party's having taken possession (and thereby having rendered subsection (c) inapplicable). The debtor cannot qualify as an agent for the secured party for purposes of the secured party's taking possession. And, under appropriate circumstances, a court may determine that a person in possession is so closely connected to or controlled by the debtor that the debtor has retained effective possession, even though the person may have agreed to take possession on behalf of the secured party. If so, the person's taking possession would not constitute the secured party's taking possession and would not be sufficient for perfection. See also Section 9-205(b). In a typical escrow arrangement, where the escrowee has possession of collateral as agent for both the secured party and the debtor, the debtor's relationship to the escrowee is not such as to constitute retention of possession by the debtor.

4. Goods in Possession of Third Party: Perfection. Former Section 9-305 permitted perfection of a security interest by notification to a bailee in possession of collateral. This Article distinguishes between goods in the possession of a bailee who has issued a document of title covering the goods and goods in the possession of a third party who has not issued a document. Section 9-312(c) or (d) applies to the former, depending on whether the document is negotiable. Section 9-313(c) applies to the latter. It provides a method of perfection by possession when the collateral is possessed by a third person who is not the secured party's agent.

Notification of a third person does not suffice to perfect under Section 9-313(c).

Rather, perfection does not occur unless the third person authenticates an acknowledgment that it holds possession of the collateral for the secured party's benefit. Compare Section 9-312(d), under which receipt of notification of the security party's interest by a bailee holding goods covered by a nonnegotiable document is sufficient to perfect, even if the bailee does not acknowledge receipt of the notification. A third person may acknowledge that it will hold for the secured party's benefit goods to be received in the future. Under these circumstances, perfection by possession occurs when the third person obtains possession of the goods.

Under subsection (c), acknowledgment of notification by a "lessee . . . in . . . ordinary course of . . . business" (defined in Section 2A-103) does not suffice for possession. The section thus rejects the reasoning of In re Atlantic Systems, Inc., 135 B.R. 463 (Bankr. S.D.N.Y. 1992) (holding that notification to debtor-lessor's lessee sufficed to perfect security interest in leased goods). See Steven O. Weise, Perfection by Possession: The Need for an Objective Test, 29 Idaho Law Rev. 705 (1992-93) (arguing that lessee's possession in ordinary course of debtor-lessor's business does not provide adequate public notice of possible security interest in leased goods). Inclusion of a per se rule concerning lessees is not meant to preclude a court, under appropriate circumstances, from determining that a third person is so closely connected to or controlled by the debtor that the debtor has retained effective possession. If so, the third person's acknowledgment would not be sufficient for perfection.

In some cases, it may be uncertain whether a person who has possession of collateral is an agent of the secured party or a non-agent bailee. Under those circumstances, prudence might suggest that the secured party obtain the person's acknowledgment to avoid litigation and ensure perfection by possession regardless of how the relationship between the secured party and the person is characterized.

5. No Relation Back. Former Section 9-305 provided that a security interest is perfected by possession from the time possession is taken "without a relation back." As the Comment to former Section 9-305 observed, the relation-back theory, under which the taking of possession was deemed to relate back to the date of the original security agreement, has had little vitality since the 1938 revision of the Federal Bankruptcy Act. The theory is inconsistent with former Article 9 and with this Article. See Section 9-313(d). Accordingly, this Article deletes the quoted phrase as unnecessary. Where a pledge transaction is contemplated, perfection dates only from the time possession is taken, although a security interest may attach, unperfected. The only exceptions to this rule are the short, 20-day periods of perfection provided in Section 9-312(e), (f), and (g), during which a debtor may have possession of specified collateral in which there is a perfected security interest.

6. Certificated Securities. The second sentence of subsection (a) reflects the traditional rule for perfection of a security interest in certificated securities. Compare Section 9-115(6) (1994 Official Text); Sections 8-321, 8-313(1)(a) (1978 Official Text); Section 9-305 (1972 Official Text). It has been modified to refer to "delivery" under Section 8-301. Corresponding changes appear in Section 9-203(b).

Subsections (e), (f), and (g), which are new, apply to a person in possession of security certificates or holding security certificates for the secured party's benefit under Section 8-301. For delivery to occur when a person other than a secured party holds possession for the secured party, the person may not be a securities intermediary.

Under subsection (e), a possessory security interest in a certificated security remains perfected until the debtor obtains possession of the security certificate. This rule is analogous to that of Section 9-314(c), which deals with perfection of security interests in investment property by control. See Section 9-314, Comment 3.

7. Goods Covered by Certificate of Title. Subsection (b) is necessary to effect changes to the choice-of-law rules governing goods covered by a certificate of title. These changes are described in the Comments to Section 9-311. Subsection (b), like subsection (a), does not create a right to take possession. Rather, it indicates the circumstances under which the secured party's taking possession of goods covered by a certificate of title is effective to perfect a security interest in the goods: the goods become covered by a certificate of title issued by this State at a time when the security interest is perfected by any method under the law of another jurisdiction.

8. Goods in Possession of Third Party: No Duty to Acknowledge; Consequences of Acknowledgment. Subsections (f) and (g) are new and address matters as to which former Article 9 was silent. They derive in part from Section 8-106(g). Subsection (f) provides that a person in possession of collateral is not required to acknowledge that it holds for a secured party. Subsection (g)(1) provides that an acknowledgment is effective even if wrongful as to the debtor. Subsection (g)(2) makes clear that an acknowledgment does not give rise to any duties or responsibilities under this Article. Arrangements involving the possession of goods are hardly standardized. They include bailments for services to be performed on the goods (such as repair or processing), for use (leases), as security

(pledges), for carriage, and for storage. This Article leaves to the agreement of the parties and to any other applicable law the imposition of duties and responsibilities upon a person who acknowledges under subsection (c). For example, by acknowledging, a third party does not become obliged to act on the secured party's direction or to remain in possession of the collateral unless it agrees to do so or other law so provides.

9. Delivery to Third Party by Secured Party. New subsections (h) and (i) address the practice of mortgage warehouse lenders. These lenders typically send mortgage notes to prospective purchasers under cover of letters advising the prospective purchasers that the lenders hold security interests in the notes. These lenders relied on notification to maintain perfection under former 9-305. Requiring them to obtain authenticated acknowledgments from each prospective purchaser under subsection (c) could be unduly burdensome and disruptive of established practices. Under subsection (h), when a secured party in possession itself delivers the collateral to a third party, instructions to the third party would be sufficient to maintain perfection by possession; an acknowledgment would not be necessary. Under subsection (i), the secured party does not relinquish possession by making a delivery under subsection (h), even if the delivery violates the rights of the debtor. That subsection also makes clear that a person to whom collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article provides otherwise.

28-9-314. Perfection by control. — (a) A security interest in investment property, deposit accounts, letter of credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter of credit rights, or electronic documents is perfected by control under section 28-7-106, 28-9-104, 28-9-105 or 28-9-107, when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 28-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One (1) of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

History.

I.C., § 28-9-314, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 29, p. 77.

Compiler's Notes. Section 30 of S.L. 2004, ch. 42 is compiled as § 28-9-317.

Collateral References. Perfection of security interests by possession, delivery, or control under revised article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

OFFICIAL COMMENT

1. Source. Substantially new; derived in part from former Section 9-115(4).

2. Control. This section provides for perfection by control with respect to investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, and electronic documents. For explanations of how a secured party takes control of these types of collateral, see Sections 9-104 through 9-107 and Section 7-106. Subsection (b) explains when a security interest is perfected by control and how long a security interest remains perfected by

control. Like Section 9-313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of "relation back." See Section 9-313, Comment 5. As to an electronic document that is reissued in a tangible medium, Section 7-105, a secured party that is perfected by control in the electronic document should file as to the document before relinquishing control in order to maintain continuous perfection in the document. See Section 9-308.

3. Investment Property. Subsection (c) provides a special rule for investment property. Once a secured party has control, its security interest remains perfected by control until the secured party ceases to have control and the debtor receives possession of collateral that is a certificated security, becomes the registered owner of collateral that is an uncertificated security, or becomes the entitlement holder of collateral that is a security entitlement. The result is particularly important in the "repledge" context. See Section 9-207, Comment 5.

In a transaction in which a secured party who has control grants a security interest in investment property or sells outright the investment property, by virtue of the debtor's consent or applicable legal rules, a purchaser from the secured party typically will cut off the debtor's rights in the investment property or be immune from the debtor's claims. See Section 9-207, Comments 5 and 6. If the investment property is a security, the debtor normally would retain no interest in the security following the purchase from the secured party, and a claim of the debtor against the secured party for redemption (Section 9-623) or otherwise with respect to the security would be a purely personal claim. If the investment property transferred by the secured party is a financial asset in which the debtor had a security entitlement credited to a securities account maintained with the secured party as a securities intermediary, the debtor's claim against the secured party could arise as a part of its securities account notwithstanding its personal nature. (This claim would be analogous to a "credit balance" in the securities account, which is a component of the securities account even though it is a personal claim against the intermediary.) In the case in which the debtor may retain an interest in investment property notwithstanding a repledge or sale by the secured party, subsection (c) makes clear that the security interest will remain perfected by control.

28-9-315. Secured party's rights on disposition of collateral and in proceeds.

Analysis

Interest in proceeds.
Proceeds.

Interest In Proceeds.

Attorney's security interest in the promissory note automatically attached to any proceeds of the note, including any rights arising out of the note. The security agreement did not limit the types of proceeds to which the attorney's security interest would attach because the attorney identified specific proceeds in the security agreement, including any judgments arising out of a collection action. Karle v. Visser, 141 Idaho 804, 118 P.3d 136 (2005).

Proceeds.

Debtors settled with an electrical company whose negligence had caused injuries to debtors' cattle; the settlement constituted proceeds under this section, making it subject to the interests of creditors who held a security interest in the cattle. In re Wiersma, 283 Bankr. 294 (Bankr. D. Idaho 2002), aff'd in part, 324 Bankr. 92 (B.A.P. 9th Cir. 2005).

28-9-316. Continued perfection of security interest following change in governing law. [Effective until July 1, 2013.]

Cited in: Gugino v. Wachovia Dealer Servs. (In re Owen), 2009 Bankr. LEXIS 3318 (Bankr. D. Idaho July 15, 2009).

28-9-316. Effect of change in governing law. [Effective July 1, 2013.] — (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c), Idaho Code, remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one (1) jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 28-9-311(b) or 28-9-313, Idaho Code, are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four (4) months after the goods had become so covered.

(f) A security interest in deposit accounts, letter of credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the

time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four (4) months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c), Idaho Code, is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(2) If a security interest that is perfected by a financing statement that is effective under paragraph (1) of this subsection becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c), Idaho Code, or the expiration of the four (4) month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c), Idaho Code, and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four (4) months after the new debtor becomes bound under section 28-9-203(d), Idaho Code, if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

(2) A security interest that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four (4) month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c), Idaho Code, remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

History.

I.C., § 28-9-316, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 5, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, substituted "Effect of change" for "Continued perfection of security interest following change" in the section heading and added subsections (h) and (i).

Section 22 of S.L. 2012, ch 145 provided

that the act should take effect on and after July 1, 2013.

28-9-317. Interests that take priority over or take free of security interest or agricultural lien. [Effective until July 1, 2013.] — (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 28-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in section 28-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 28-9-320 and 28-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

History.

I.C., § 28-9-317, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 30, p. 77.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-317.

Sections 29 and 31 of S.L. 2004, ch. 42 are compiled as §§ 28-9-314 and 28-9-338, respectively.

OFFICIAL COMMENT

1. Source. Former Sections 9-301, 2A-307(2).

2. Scope of This Section. As did former Section 9-301, this section lists the classes of persons who take priority over, or take free of, an unperfected security interest. Section 9-308 explains when a security interest or agricultural lien is "perfected." A security interest that has attached (see Section 9-203) but as to which a required perfection step has not been taken is "unperfected." Certain provisions have been moved from former Section 9-301. The definition of "lien creditor" now appears in Section 9-102, and the rules governing priority in future advances are found in Section 9-323.

3. Competing Security Interests. Section 9-322 states general rules for determining priority among conflicting security interests and refers to other sections that state special

rules of priority in a variety of situations. The security interests given priority under Section 9-322 and the other sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest. Paragraph (a)(1) of this section so states.

4. Filed but Unattached Security Interest vs. Lien Creditor. Under former Section 9-301(1)(b), a lien creditor's rights had priority over an unperfected security interest. Perfection required attachment (former Section 9-303), and attachment required the giving of value (former Section 9-203). It followed that, if a secured party had filed a financing statement, but the debtor had not entered into a security agreement and value had not yet been given, an intervening lien creditor whose lien arose after filing but before attachment of the security interest acquired rights that are senior to those of the secured party who later gives value. This result comported with the nemo dat concept: When the security interest attached, the collateral was already subject to the judicial lien.

On the other hand, this approach treated the first secured advance differently from all other advances, even in circumstances in which a security agreement covering the collateral had been entered into before the judicial lien attached. The special rule for future advances in former Section 9-301(4) (substantially reproduced in Section 9-323(b)) afforded priority to a discretionary advance made by a secured party within 45 days after the lien creditor's rights arose as long as the secured party was "perfected" when the lien creditor's lien arose-i.e., as long as the advance was not the first one and an earlier advance had been made.

Subsection (a)(2) revises former Section 9-301(1)(b) and, in appropriate cases, treats the first advance the same as subsequent advances. More specifically, a judicial lien that arises after the security-agreement condition of Section 9-203(b)(3) is satisfied and a financing statement is filed, but before the security interest attaches and becomes perfected is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in Section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only enforceable claim to the property.

5. Security Interest of Consignor or Receivables Buyer vs. Lien Creditor. Section 1-201(37) defines "security interest" to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See Sections 9-318 (seller), 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See Section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. Purchasers Other Than Secured Parties. Subsections (b), (c), and (d) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, subsections (b) and (d) of this section use the phrase "takes free."

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

Normally, there will be no question when a buyer of tangible chattel paper, tangible documents, instruments, or security certificates "receives delivery" of the property. See Section 1-201 (defining "delivery"). However, sometimes a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly at its own location. Under those circumstances, the

buyer or lessee "receives delivery" within the meaning of subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent to a potential lender to the seller or lessor that another person might have an interest in the goods.

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (accounts, electronic chattel paper, electronic documents, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See Section 9-321.

Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment intangibles, or promissory notes is a "secured party" (defined in Section 9-102), and subsections (b) and (d) do not determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing security interests apply. See Section 9-322.

7. Agricultural Liens. Subsections (a), (b), and (c) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

8. Purchase-Money Security Interests. Subsection (e) derives from former Section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (e) differs from former Section 9-301(2) in two significant respects. First, subsection (e) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (e) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in Section 9-311(a) "is equivalent to the filing of a financing statement." It follows that a person who perfects a security interest in goods covered by a certificate of title by complying with the perfection requirements of an applicable certificate-of-title statute "files a financing statement" within the meaning of subsection (e).

28-9-317. Interests that take priority over or take free of security interest or agricultural lien. [Effective July 1, 2013.] — (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 28-9-322, Idaho Code; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in section 28-9-203(b)(3), Idaho Code, is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments or a certificated security takes free of a security interest

if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 28-9-320 and 28-9-321, Idaho Code, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

History.

I.C., § 28-9-317, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 30, p. 77; am. 2012, ch. 145, § 6, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-317.

The 2012 amendment, by ch. 145, substituted "of collateral other than tangible chattel paper, tangible documents, goods, instruments or" for "of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than" in subsection (d).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-326. Priority of security interests created by new debtor. [Effective until July 1, 2013.]

Application.

Pursuant to former § 28-9-312(5)(a) (now this section), the priority of the bank's security interest granted under the March 5, 1999 security agreement related back to February 3, 1999, which was when it had filed a financing statement to perfect its security interest in the debtor's collateral, which included its equipment; thus, the bank had priority over the security interest of the investor, which was perfected on March 1, 1999. If the investor wanted a security interest in the equipment that had priority over the bank's security interest, then the investor needed to contact the bank to reach such an agreement. Bank of the West v. Life Investors Ins. Co. of Am., 139 Idaho 445, 80 P.3d 1046 (2003).

28-9-326. Priority of security interests created by new debtor. [Effective July 1, 2013.] — (a) Subject to subsection (b) of this section, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of sections 28-9-316(i)(1) and 28-9-508, Idaho Code, is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

History.

I.C., § 28-9-326, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 7, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, substituted "in collateral in which the new debtor has or acquires rights and perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of sections 28-9-316(i)(1) and 28-

9-508, Idaho Code, is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement" for "which is perfected by a filed financing statement that is effective solely under section 28-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 28-9-508" in subsection (a) and substituted "described in subsection (a) of this section" for "that are effective solely under section 28-9-508" in subsection (b).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. — If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 28-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

History.
I.C., § 28-9-338, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 31, p. 77.

Compiler's Notes. Sections 30 and 32 of S.L. 2004, ch. 42 are compiled as §§ 28-9-317 and 28-9-601, respectively.

PART 4. RIGHTS OF THIRD PARTIES

28-9-402. Secured party not obligated on contract of debtor or in tort.

Cited in: Hymas v. Am. Gen. Fin., Inc. (In re Blair), 2000 Bankr. LEXIS 2115 (Bankr. D. Idaho May 18, 2000).

28-9-406. Discharge of account debtor — Notification of assignment — Identification and proof of assignment — Restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective. [Effective until July 1, 2013.]

Cited in: Foley v. Grigg, 144 Idaho 530, 164 P.3d 810 (2007).

Collateral References. Construction and application of U.C.C. § 9-406 and former U.C.C. § 9-318(3) providing that account debtor is authorized to pay assignor until receipt of notification to pay assignee. 35 A.L.R.6th 437.

28-9-406. Discharge of account debtor — Notification of assignment — Identification and proof of assignment — Restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective. [Effective July 1, 2013.] — (a) Subject to

subsections (b) through (i) of this section, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Except as otherwise provided in subsection (e) of this section and sections 28-9-407 and 28-12-303, Idaho Code, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 28-9-610, Idaho Code, or an acceptance of collateral under section 28-9-620, Idaho Code.

(f) Except as otherwise provided in sections 28-9-407 and 28-12-303, Idaho Code, and subject to subsections (h) and (i) of this section, a rule of

law, statute, rule or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, rule or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable, an award of compensation made pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, or a lottery prize subject to the provisions of chapter 74, title 67, Idaho Code.

History.

I.C., § 28-9-406, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 8, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, added "other than a sale pursuant to a disposition under section 28-9-610, Idaho Code, or an acceptance of collateral under section 28-9-620, Idaho Code" to the end of subsection (e).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-408. Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective. [Effective July 1, 2013.] — (a) Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 28-9-610, Idaho Code, or an acceptance of collateral under section 28-9-620, Idaho Code.

(c) A rule of law, statute, rule or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this chapter but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

History.

I.C., § 28-9-408, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 9, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, added "other than a sale pursuant to a disposition under section 28-9-610, Idaho Code, or an acceptance of collateral under section 28-9-620, Idaho Code" in subsection (b).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

Part 5. Filing

28-9-502. Contents of financing statement — Record of mortgage as financing statement — Time of filing financing statement — Farm products. [Effective until July 1, 2013.] — (a) Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 28-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(e) A financing statement covering farm products is sufficient if it:

(1) Contains the names and addresses of both the debtor and the secured party;

(2) Is signed, authorized or otherwise authenticated by the debtor;

(3) Contains the debtor's social security number or other unique number, combination of numbers and letters, or other identifier selected by the secretary of state using a selection system or method approved by the secretary of agriculture, or in the case of a debtor doing business other

than as an individual, the debtor's internal revenue service taxpayer identification number or other approved unique identifier;

(4) Contains a description by category of the farm products subject to the security interest and the amount of such products, where applicable;

(5) Indicates the county or counties in which the farm products are produced or located.

(f) A financing statement covering farm products must be amended in writing and similarly signed, authorized or authenticated, and filed, to reflect any material changes. In the event such form is not incorporated within the financing statement, the effectiveness and continuation of that form is to be treated as if it were a part of the financing statement with which it is filed.

(g) If the financing statement covering farm products, or an amendment to such statement, is filed electronically, neither the debtor's nor the secured party's signature shall be required.

(h) In order to terminate a financing statement covering farm products, the amendment must be terminated in writing and signed or authenticated by the secured party.

History.

I.C., § 28-9-502, as added by 2001, ch. 208, § 2, p. 704; am. 2007, ch. 317, § 1, p. 945.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-502.

The 2007 amendment, by ch. 317, rewrote subsection (e) to the extent that a detailed comparison is impracticable; in subsection (f), substituted "financing statement covering farm products" for "financing statement described in subsection (e) of this section," deleted "within three (3) months" following "amended in writing," and inserted "authorized or authenticated"; and added subsections (g) and (h).

28-9-502. Contents of financing statement — Record of mortgage as financing statement — Time of filing financing statement — Farm products. [Effective July 1, 2013.] — (a) Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 28-9-501(b), Idaho Code, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a

financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 28-9-503(a)(4), Idaho Code, applies; and

(4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(e) A financing statement covering farm products is sufficient if it:

(1) Contains the names and addresses of both the debtor and the secured party;

(2) Is signed, authorized or otherwise authenticated by the debtor;

(3) Contains the debtor's social security number or other unique number, combination of numbers and letters, or other identifier selected by the secretary of state using a selection system or method approved by the secretary of agriculture, or in the case of a debtor doing business other than as an individual, the debtor's internal revenue service taxpayer identification number or other approved unique identifier;

(4) Contains a description by category of the farm products subject to the security interest and the amount of such products, where applicable;

(5) Indicates the county or counties in which the farm products are produced or located.

(f) A financing statement covering farm products must be amended in writing and similarly signed, authorized or authenticated, and filed, to reflect any material changes. In the event such form is not incorporated within the financing statement, the effectiveness and continuation of that form is to be treated as if it were a part of the financing statement with which it is filed.

(g) If the financing statement covering farm products, or an amendment to such statement, is filed electronically, neither the debtor's nor the secured party's signature shall be required.

(h) In order to terminate a financing statement covering farm products, the amendment must be terminated in writing and signed or authenticated by the secured party.

History.

I.C., § 28-9-502, as added by 2001, ch. 208, § 2, p. 704; am. 2007, ch. 317, § 1, p. 945; am. 2012, ch. 145, § 10, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-502.

The 2012 amendment, by ch. 145, rewrote paragraph (c)(3) which read: "The record satisfies the requirements for a financing state-

ment in this section other than an indication that it is to be filed in the real property records.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-503. Name of debtor and secured party. [Effective until July 1, 2013.]

Analysis

Change of name.
Name of debtor.

Change of Name.

Where the creditor failed to update its financing statement after the debtor changed its name, it failed to comply with the requirements of this section and § 28-9-507(c). The priority of its lien was defeated by the trustee in bankruptcy under 11 U.S.C.S. § 544(a)(1). Gugino v. Wells Fargo Bank Northwest, N.A. (In re Lifestyle Home Furnishings, LLC), 2010 Bankr. LEXIS 111 (Bankr. D. Idaho Jan. 14, 2010).

Name of Debtor.

Financing statement was seriously misleading since the debtor's full legal name was Wing Foods, Inc., and the statement identified the debtor as Wing Fine Food. Bankr. Estate of Wing Foods, Inc. v. CCF Leasing Co. (In re Wing Foods), 2010 Bankr. LEXIS 114 (Bankr. D. Idaho Jan. 14, 2010).

Collateral References. Sufficiency and effectiveness of designation of debtor in financing statement under Uniform Commercial Code §§ 9-503 and 9-506 (Revised 2000). 28 A.L.R.6th 461.

28-9-503. Name of debtor and secured party. [Effective July 1, 2013.] — (a) A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3) of this subsection, if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend or restate the registered organization's name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i) of this paragraph, indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii) of this paragraph, provides additional information sufficient to distinguish the trust from other trusts having one (1) or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g) of this section, if the debtor is an individual to whom this state has issued a driver's license or an Idaho identification card that has not expired, only if it provides the name of the individual which is indicated on the driver's license or the Idaho identification card;

(5) If the debtor is an individual to whom paragraph (4) of this subsection does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) if the debtor has a name, only if it provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B) of this section, names of partners, members, associates or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2) of this section.

(g) If this state has issued to an individual more than one (1) driver's license or Idaho identification card of a kind described in subsection (a)(4) of this section, the one that was issued most recently is the one to which subsection (a)(4) of this section refers.

(h) The "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

History.

I.C., § 28-9-503, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 11, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, rewrote the section to the extent that a detailed comparison is impracticable.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-506. Effect of errors or omissions.

Debtor's Name.

Financing statement failed to sufficiently provide the name of the debtor, since the debtor's full legal name was Wing Foods, Inc., and the statement identified the debtor as Wing Fine Food. Bankr. Estate of Wing Foods, Inc. v. CCF Leasing Co. (In re Wing Foods), 2010 Bankr. LEXIS 114 (Bankr. D. Idaho Jan. 14, 2010).

Collateral References. Sufficiency and effectiveness of designation of debtor in financing statement under Uniform Commercial Code §§ 9-503 and 9-506 (Revised 2000). 28 A.L.R.6th 461.

28-9-507. Effect of certain events on effectiveness of financing statement. [Effective until July 1, 2013.]

Change of Name.

Where the creditor failed to update its financing statement after the debtor changed its name, it failed to comply with the requirements of § 28-9-503(a)(1) and this section. The priority of its lien was defeated by the trustee in bankruptcy under 11 U.S.C.S. § 544(a)(1). Gugino v. Wells Fargo Bank Northwest, N.A. (In re Lifestyle Home Furnishings, LLC), 2010 Bankr. LEXIS 111 (Bankr. D. Idaho Jan. 14, 2010).

28-9-507. Effect of certain events on effectiveness of financing statement. [Effective July 1, 2013.] — (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) of this section and section 28-9-508, Idaho Code, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 28-9-506, Idaho Code.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 28-9-503(a), Idaho Code, so that the financing statement becomes seriously misleading under section 28-9-506, Idaho Code:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after that event.

History.

I.C., § 28-9-507, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 12, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, in subsection (c), rewrote the introductory paragraph which read: "If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 28-9-506" and substituted "filed financing statement becomes seriously misleading" for "change" in paragraphs (1) and (2).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-513. Termination statement.

Collateral References. Consignment transactions under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R. 6th 289.

28-9-515. Duration and effectiveness of financing statement — Effect of lapsed financing statement. [Effective until July 1, 2013.] — (a) Except as otherwise provided in section 28-9-705(g) and subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public finance transaction or manufactured home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public finance transaction or manufactured home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) Except as otherwise provided in section 28-9-705(g), a continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (a) of this section or the thirty (30) year period specified in subsection (b) of this section, whichever is applicable.

(e) Except as otherwise provided in sections 28-9-510 and 28-9-705(g), upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 28-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

History.
I.C., § 28-9-515, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 4, p. 290.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-515.

Sections 3 and 5 of S.L. 2002, ch. 107 are compiled as §§ 28-9-309 and 28-9-626, respectively.

28-9-515. Duration and effectiveness of financing statement — Effect of lapsed financing statement. [Effective July 1, 2013.] — (a) Except as otherwise provided in section 28-9-705(g), Idaho Code, and subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public finance transaction or manufactured home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public finance transaction or manufactured home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) Except as otherwise provided in section 28-9-705(g), Idaho Code, a continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (a) of this section or the thirty (30) year period specified in subsection (b) of this section, whichever is applicable.

(e) Except as otherwise provided in sections 28-9-510 and 28-9-705(g), Idaho Code, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 28-9-502(c), Idaho Code, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

History.
I.C., § 28-9-515, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 4, p. 290; am. 2012, ch. 145, § 13, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-515.

The 2012 amendment, by ch. 145, inserted "initial" preceding "financial statement" in subsection (f).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-516. What constitutes filing — Effectiveness of filing. [Effective until July 1, 2013.] — (a) Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by section 28-9-512 or 28-9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 28-9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed, or recorded, in the filing office described in section 28-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, except for financing statements covering farm products and amendments of such financing statements, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 28-9-514(a) or an amendment filed under section 28-9-514(b), the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the six (6) month period prescribed by section 28-9-515(d);

(8) In the case of a financing statement covering farm products, the financing statement does not contain all of the information specified in section 28-9-502(e) and does not conform to the official form for farm products financing statements published by the secretary of state; or

(9) In the case of an amendment or correction statement relating to a financing statement covering farm products, the amendment or correction statement does not conform to the official form for amendment or correction statements relating to financing statements covering farm products published by the secretary of state.

(10) The filing office is prohibited from accepting the filing pursuant to the provisions of section 28-9-516A.

(c) For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 28-9-512, 28-9-514 or 28-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

History.
I.C., § 28-9-516, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 304, § 1, p. 852.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-516.

Section 2 of S.L. 2004, ch. 304 is compiled as § 28-9-707.

28-9-516. What constitutes filing — Effectiveness of filing. [Effective July 1, 2013.] — (a) Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by section 28-9-512 or 28-9-518, Idaho Code, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 28-9-515, Idaho Code;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed, or recorded, in the filing office described in section 28-9-501(a)(1), Idaho Code, the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, except for financing statements covering farm products and amendments of such financing statements, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under section 28-9-514(a), Idaho Code, or an amendment filed under section 28-9-514(b), Idaho Code, the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the six (6) month period prescribed by section 28-9-515(d), Idaho Code;

(8) In the case of a financing statement covering farm products, the financing statement does not contain all of the information specified in section 28-9-502(e), Idaho Code, and does not conform to the official form for farm products financing statements published by the secretary of state; or

(9) In the case of an amendment or correction statement relating to a financing statement covering farm products, the amendment or correction statement does not conform to the official form for amendment or correction statements relating to financing statements covering farm products published by the secretary of state.

(10) The filing office is prohibited from accepting the filing pursuant to the provisions of section 28-9-516A, Idaho Code.

(c) For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 28-9-512, 28-9-514 or 28-9-518, Idaho Code, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

History.
I.C., § 28-9-516, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 304, § 1, p. 852; am. 2012, ch. 145, § 14, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-516.

The 2012 amendment, by ch. 145, substituted "information" for "correction" in paragraph (b)(3)(B); rewrote paragraph (b)(5)(B) which read: "indicate whether the debtor is an individual or an organization"; and deleted paragraph (b)(5)(C), which related to a debtor as an organization.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-516A. Filing officer duties. [Effective until July 1, 2013.] — (1) The filing officer shall not file an initial financing statement or financing statement amendment:

(a) Which contains an assumed business name for either an individual or a business entity other than a general partnership.

(b) When an individual debtor and an individual secured party would, as a result of the filing, appear to be the same individual on the financing statement.

(2) The filing officer may require, prior to filing, reasonable proof from the secured party that an individual debtor is in fact a "transmitting utility" as defined in section 28-9-102, Idaho Code, if a filing indicates that the debtor is a transmitting utility.

(3) The filing officer may, prior to filing, cause to be unreadable any signatures, social security account numbers, taxpayer identification numbers, and employer identification numbers that appear on financing statements or financing statement amendments.

(4) The secretary of state may petition the district court in Ada county for an order to show cause why filings not in compliance with subsections (1) and (2) of this section should not be deleted from the files and records of the secretary of state.

History.
I.C., § 28-9-516A, as added by 2003, ch. 206, § 1, p. 549.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-516A.

28-9-516A. Filing officer duties. [Effective July 1, 2013.] — (1) The filing officer shall not file an initial financing statement or financing statement amendment:

(a) Which contains an assumed business name for either an individual or a business entity other than a general partnership if the assumed business name is designated as an assumed business name and the true name of the person using the assumed business name is not included.

(b) When an individual debtor and an individual secured party would, as a result of the filing, appear to be the same individual on the financing statement.

(2) The filing officer may require, prior to filing, reasonable proof from the secured party that an individual debtor is in fact a "transmitting utility" as defined in section 28-9-102, Idaho Code, if a filing indicates that the debtor is a transmitting utility.

(3) The filing officer may, prior to filing, cause to be unreadable any signatures, social security account numbers, taxpayer identification numbers, and employer identification numbers that appear on financing statements or financing statement amendments.

(4) The secretary of state may petition the district court in Ada county for an order to show cause why filings not in compliance with subsections (1) and (2) of this section should not be deleted from the files and records of the secretary of state.

History.

I.C., § 28-9-516A, as added by 2003, ch. 206, § 1, p. 549; am. 2012, ch. 145, § 15, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-516A.

The 2012 amendment, by ch. 145, added "if the assumed business name is designated as an assumed business name and the true name of the person using the assumed name is not included" at the end of paragraph (1(a).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-518. Claim concerning inaccurate or wrongfully filed record. [Effective until July 1, 2013.] — (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) A correction statement may be filed in connection with the previous filing of a financing statement covering farm products under section 28-9-502.

History.

I.C., § 28-9-518, as added by 2001, ch. 208, § 2, p. 704; am. 2007, ch. 317, § 2, p. 945.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-9-518.

The 2007 amendment, by ch. 317, added subsection (d).

28-9-518. Claim concerning inaccurate or wrongfully filed record. [Effective July 1, 2013.] — (a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 28-9-509(d), Idaho Code.

(d) An information statement under subsection (c) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under section 28-9-509(d), Idaho Code.

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(f) An information statement may be filed in connection with the previous filing of a financing statement covering farm products under section 28-9-502, Idaho Code.

History.

I.C., § 28-9-518, as added by 2001, ch. 208, § 2, p. 704; am. 2007, ch. 317, § 2, p. 945; am. 2012, ch. 145, § 16, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-9-518.

The 2012 amendment, by ch. 145, substituted "an information statement" for "a correction statement" throughout the section; inserted "under subsection (a) of this section" in the introductory paragraph of (b); and added subsections (c) and (d), redesignating the subsequent subsections accordingly.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-519. Numbering, maintaining, and indexing records — Communicating information provided in records. — (a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d) and (e) of this section.

(b) A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 28-9-514(a) or an amendment filed under section 28-9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under section 28-9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing office rule, but not later than two (2) business days after the filing office receives the record in question.

(i) Subsections (b) and (h) of this section do not apply to a filing office described in section 28-9-501(a)(1).

History.
I.C., § 28-9-519, as added by 2001, ch. 208, § 2, p. 704.

Compiler's Notes. This section is set out above to correct errors appearing in subdivisions (d) and (e) in the bound volume.

28-9-521. Uniform form of written financing statement and amendment. [Effective July 1, 2013.] — (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in section 28-9-516(b), Idaho Code:

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1e or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME					
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY		STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME					
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY		STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3e or 3b)

3e. ORGANIZATION'S NAME					
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY		STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; If line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 28-9-516(b), Idaho Code:

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) In the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in Item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:

Check one of these two boxes: AND Check one of these three boxes to:

This Change affects ☐ Debtor or ☐ Secured Party of record ☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ☐ ADD name: Complete item 7a or 7b, and item 7c ☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

History.
I.C., § 28-9-521, as added by 2012, ch. 145, § 18, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

Part 6. Default

28-9-601. Rights after default — Judicial enforcement — Consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes. — (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 28-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107 has the rights and duties provided in section 28-9-207.

(c) The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) of this section and section 28-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in section 28-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

History.
I.C., § 28-9-601, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 42, § 32, p. 77.

Compiler's Notes. Section 31 of S.L. 2004, ch. 42 is compiled as § 28-9-338, and section 33 contained a repeal.

28-9-603. Agreement on standards concerning rights and duties.

Cited in: Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

28-9-607. Collection and enforcement by secured party. [Effec-

tive July 1, 2013.] — (a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under section 28-9-315, Idaho Code;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under section 28-9-104(a)(1), Idaho Code, may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under section 28-9-104(a)(2) or (3), Idaho Code, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

History.

I.C., § 28-9-607, as added by 2001, ch. 208, § 2, p. 704; am. 2012, ch. 145, § 19, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2012 amendment, by ch. 145, inserted "with respect to the obligation secured by the mortgage" in paragraph (b)(2)(A).

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-610. Disposition of collateral after default.

Commercially Reasonable.

The failure of a secured party to dispose of collateral in a commercially reasonable manner raises a rebuttable presumption that the fair market value of the collateral at the time of repossession was equal to the outstanding debt. Aviation Fin. Group, LLC v. Duc Housing Partners, Inc., 2010 U.S. Dist. LEXIS 39007 (D. Idaho Apr. 20, 2010).

The obligation of commercial reasonableness in the disposition of collateral may not be "disclaimed" by agreement, however parties may determine by agreement the standards by which the fulfillment of commercial reasonableness is to be measured if such standards are not manifestly unreasonable. In an adversary proceeding, the commercial reasonableness standards in the security agreement between the bankruptcy debtor and a creditor were, on their face, manifestly unreasonable under the UCC. Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

28-9-615. Application of proceeds of disposition — Liability for deficiency and right to surplus.

Amount of Proceeds.

Under § 28-9-626(e), if a surplus is calculated under § 28-9-615(f), the debtor has the burden of establishing that the amount of proceeds obtained from the disposition of collateral was significantly below the amount a commercially reasonable disposition would have brought. Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

28-9-625. Remedies for secured party's failure to comply with chapter.

Cited in: Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

28-9-626. Action in which deficiency or surplus is in issue. — In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in section 28-9-628, if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses and attorney's fees exceeds the greater of:

(1) The proceeds of the collection, enforcement, disposition or acceptance; or

(2) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(d) For purposes of subsection (c)(2) of this section, the amount of proceeds that would have been realized is equal to the sum of the secured

obligation, expenses and attorney's fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under section 28-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

History.
I.C., § 28-9-626, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 5, p. 290.

Compiler's Notes. Sections 4 and 6 of S.L. 2002, ch. 107 are compiled as §§ 28-9-515 and 28-9-705, respectively.

Cited in: Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

Commercially Reasonable Sale.
The failure of a secured party to dispose of collateral in a commercially reasonable manner raises a rebuttable presumption that the fair market value of the collateral at the time of repossession was equal to the outstanding debt. Aviation Fin. Group, LLC v. Duc Housing Partners, Inc., 2010 U.S. Dist. LEXIS 39007 (D. Idaho Apr. 20, 2010).

28-9-627. Determination of whether conduct was commercially reasonable.

Cited in: Aviation Fin. Group, LLC v. Duc Housing Partners, Inc., 2010 U.S. Dist. LEXIS 39007 (D. Idaho Apr. 20, 2010).

Applicability.
In the absence of an enforceable agreement between the parties, the determination of whether the disposition of collateral was made in a commercially reasonable manner is governed by this section. Fin. Fed. Credit Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.), 436 B.R. 582 (Bankr. D. Idaho 2010).

Part 7. Transition

28-9-702. Savings clause.

Continued Perfection.
Since the creditor's security interest was perfected under § 28-9-302(1) by filing a financing statement, no further action was required for the creditor to be perfected under § 28-9-703(a) or § 28-9-702. In re Wiersma, 283 Bankr. 294 (Bankr. D. Idaho 2002), aff'd in part, 324 Bankr. 92 (B.A.P. 9th Cir. 2005).

28-9-703. Security interest perfected before effective date.

Continued Perfection.
Since the creditor's security interest was perfected under § 28-9-302(1) by filing a financing statement, no further action was required for the creditor to be perfected under § 28-9-703(a). In re Wiersma, 283 Bankr. 294 (Bankr. D. Idaho 2002), aff'd in part, 324 Bankr. 92 (B.A.P. 9th Cir. 2005).

28-9-705. Effectiveness of action taken before effective date. — (a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one (1) year after this act takes effect. An attached security interest becomes unperfected one (1) year after this act takes effect unless the

security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 28-9-103. However, except as otherwise provided in subsections (d) and (e) of this section and section 28-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c) (2) of this section applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 28-9-103 only to the extent that part 3 provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

(g) A financing statement filed as a fixture, timber or mineral filing before July 1, 2001 (except for a record of mortgage which is effective as a financing statement filed as a fixture filing) shall cease to be effective after June 30, 2006. The effectiveness of such a financing statement may be continued by filing a continuation statement between January 1, 2006, and June 30, 2006, inclusive. The new five (5) year effective period for such a financing statement, as provided in section 28-9-515, shall commence on the date of filing such continuation statement.

History.
I.C., § 28-9-705, as added by 2001, ch. 208, § 2, p. 704; am. 2002, ch. 107, § 6, p. 290.

Compiler's Notes. Sections 5 and 7 of S.L. 2002, ch. 107 are compiled as §§ 28-9-626 and 39-1450, respectively.

28-9-707. Amendment of preeffective-date financing statement. — A person may file an initial financing statement or a continuation statement under this part if:

(a) In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(b) After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in section 28-9-501;

(2) An amendment is filed in the office specified in section 28-9-501, concurrently with, or after the filing in that office of, an initial financing statement that satisfies the provisions of subsection (c) of section 28-9-706; or

(3) An initial financing statement that provides the information as amended and satisfies the provisions of subsection (c) of section 28-9-706, is filed in the office specified in section 28-9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only pursuant to the provisions of subsections (d) and (f) of section 28-9-705, or section 28-9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies the provisions of subsection (c) of section 28-9-706, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

History.
I.C., § 28-9-707, as added by 2001, ch. 208, § 2, p. 704; am. 2004, ch. 304, § 2, p. 852.

Compiler's Notes. Section 1 of S.L. 2004, ch. 304 is compiled as § 28-9-516.

Part 8. Transition Provisions for 2011 Amendments

28-9-801. [Reserved.]

28-9-802. Savings clause. [Effective July 1, 2013.] — (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) This act does not affect an action, case, or proceeding commenced before this act takes effect.

History.
I.C., § 28-9-802, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-803. Security interest perfected before effective date. [Effective July 1, 2013.] — (a) A security interest that is a perfected security interest immediately before this act takes effect is a perfected security interest under this chapter as amended by this act if, when this act takes effect, the applicable requirements for attachment and perfection under this chapter as amended by this act are satisfied without further action.

(b) Except as otherwise provided in section 28-9-805, Idaho Code, if, immediately before this act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter as amended by this act are not satisfied when this act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter as amended by this act are satisfied within one (1) year after this act takes effect.

History.
I.C., § 28-9-803, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-804. Security interest unperfected before effective date. [Effective July 1, 2013.] — A security interest that is an unperfected security interest immediately before this act takes effect becomes a perfected security interest:

(1) Without further action, when this act takes effect if the applicable requirements for perfection under this chapter as amended by this act are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

History.
I.C., § 28-9-804, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-805. Effectiveness of action taken before effective date. [Effective July 1, 2013.] — (a) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter as amended by this act.

(b) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment. However, except as otherwise provided in subsections (c) and (d) of this section and section 28-9-806, Idaho Code, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in this chapter as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) of this section applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment, only to the extent that this chapter as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of part 5 of this chapter as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 28-9-503(a)(2), Idaho Code, as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 28-9-503(a)(3), Idaho Code, as amended by this act.

History.

I.C., § 28-9-805, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-806. When initial financing statement suffices to continue effectiveness of financing statement. [Effective July 1, 2013.] — (a) The filing of an initial financing statement in the office specified in section 28-9-501, Idaho Code, continues the effectiveness of a financing statement filed before this act takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter as amended by this act;

(2) The pre-effective-date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before this act takes effect, for the period provided in unamended section 28-9-515, Idaho Code, with respect to an initial financing statement; and

(2) If the initial financing statement is filed after this act takes effect, for the period provided in section 28-9-515, Idaho Code, as amended by this act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of part 5 of this chapter as amended by this act for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

History.

I.C., § 28-9-806, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-807. Amendment of pre-effective-date financing statement. [Effective July 1, 2013.] — (a) In this section, "pre-effective-date financing statement" means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided

in this chapter as amended by this act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 28-9-501, Idaho Code;

(2) An amendment is filed in the office specified in section 28-9-501, Idaho Code, concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 28-9-806(c), Idaho Code; or

(3) An initial financing statement that provides the information as amended and satisfies section 28-9-806(c), Idaho Code, is filed in the office specified in section 28-9-501, Idaho Code.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 28-9-805(c) and (e) or 28-9-806, Idaho Code.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 28-9-806(c), Idaho Code, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter as amended by this act as the office in which to file a financing statement.

History.

I.C., § 28-9-807, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-808. Person entitled to file initial financing statement or continuation statement. [Effective July 1, 2013.] — A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this act takes effect; or

(B) to perfect or continue the perfection of a security interest.

History.

I.C., § 28-9-808, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

28-9-809. Priority. [Effective July 1, 2013.] — This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, this chapter as it existed before amendment determines priority.

History.
I.C., § 28-9-809, as added by 2012, ch. 145, § 20, p. 381.

Compiler's Notes. The term "this act" refers to S.L. 2012, ch. 145, which is codified as §§ 28-9-102, 28-9-105, 28-9-307, 28-9-311, 28-9-316, 28-9-317, 28-9-326, 28-9-406, 28-9-408, 28-9-502, 28-9-503, 28-9-507, 28-9-515 to 28-9-516A, 28-9-518, 28-9-521, 28-9-607, 28-9-801 to 28-9-809, and 28-12-103.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

CHAPTER 10

UNIFORM COMMERCIAL CODE — EFFECTIVE DATE AND REPEALER

SECTION.
28-10-104. Laws not repealed. [Repealed.]

28-10-104. Laws not repealed. [Repealed.]

Compiler's Notes. This section, which comprised 1967, ch. 161, § 10-104, p. 351; am. 1995, ch. 272, § 20, p. 873, was repealed by S.L. 2004, ch. 42, § 33.

CHAPTER 12

UNIFORM COMMERCIAL CODE — LEASES

PART 1. GENERAL PROVISIONS

SECTION.
28-12-103. Definitions and index of definitions. [Effective until July 1, 2013.]
28-12-103. Definitions and index of definitions. [Effective July 1, 2013.]

PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

28-12-207. Course of performance or practical construction. [Repealed.]

PART 3. EFFECT OF LEASE CONTRACT

28-12-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

PART 5. DEFAULT

28-12-501. Default — Procedure.
28-12-514. Waiver of lessee's objections.
28-12-518. Cover — Substitute goods.
28-12-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.
28-12-526. Lessor's stoppage of delivery in transit or otherwise.
28-12-527. Lessor's rights to dispose of goods.
28-12-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

PART 1. GENERAL PROVISIONS

28-12-101. Short title.

Cited in: Posey v. Ford Motor Credit Co., 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

28-12-103. Definitions and index of definitions. [Effective until July 1, 2013.] — (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars ($25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(*l*) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker.

"Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions."	Section 28-12-310(1).
"Construction mortgage."	Section 28-12-309(1)(d).
"Encumbrance."	Section 28-12-309(1)(e).
"Fixtures."	Section 28-12-309(1)(a).
"Fixture filing."	Section 28-12-309(1)(b).
"Purchase money lease."	Section 28-12-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account."	Section 28-9-102(a)(2).
"Between merchants."	Section 28-2-104(3).
"Buyer."	Section 28-2-103(1)(a).

"Chattel paper."	Section 28-9-102(a)(11).
"Consumer goods."	Section 28-9-102(a)(23).
"Document."	Section 28-9-102(a)(30).
"Entrusting."	Section 28-2-403(3).
"General intangible."	Section 28-9-102(a)(42).
"Good faith."	Section 28-1-201(b)(20).
"Instrument."	Section 28-9-102(a)(47).
"Merchant."	Section 28-2-104(1).
"Mortgage."	Section 28-9-102(a)(55).
"Pursuant to commitment."	Section 28-9-102(a)(68).
"Receipt."	Section 28-2-103(1)(c).
"Sale."	Section 28-2-106(1).
"Sale on approval."	Section 28-2-326.
"Sale or return."	Section 28-2-326.
"Seller."	Section 28-2-103(1)(d).

(4) In addition, chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.

I.C., § 28-12-103, as added by 1993, ch. 287, § 1, p. 977; am. 2001, ch. 208, § 20, p. 704; am. 2004, ch. 42, § 15, p. 77; am. 2004, ch. 43, § 36, p. 136.

Compiler's Notes. For this section as effective July 1, 2013, see the following section, also numbered § 28-12-103.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 42, substituted "acquiring" for "receiving" in subsections (1)(a) and (1)(o) and substituted "is" for "are" in subsection (1)(d).

The 2004 amendment, by ch. 43, substituted "is" for "are" in subsection (1)(d) and, in subsection (3), for the definition location of "good faith" substituted "28-1-201(b)(20)" for "28-1-201(19)."

Sections 14 and 16 of S.L. 2004, ch. 42 are compiled as §§ 28-2-705 and 28-12-514, respectively.

Section 35 of S.L. 2004, ch. 43 is compiled as § 28-5-103 and section 37 of S.L. 2004, ch. 43 contains a repeal.

OFFICIAL COMMENT

(a) "Buyer in ordinary course of business". Section 1-201(b)(9).

(b) "Cancellation". Section 2-106(4). The effect of a cancellation is provided in Section 2A-505(1).

(c) "Commercial unit". Section 2-105(6).

(d) "Conforming". Section 2-106(2).

(e) "Consumer lease". New. This Article includes a subset of rules that applies only to consumer leases. Sections 2A-106, 2A-108(2), 2A-108(4), 2A-109(2), 2A-221, 2A-309, 2A-406, 2A-407, 2A-504(3)(b), and 2A-516(3)(b).

For a transaction to qualify as a consumer lease it must first qualify as a lease. Section 2A-103(1)(j). Note that this Article regulates the transactional elements of a lease, including a consumer lease; consumer protection statutes, present and future, and existing consumer protection decisions are unaffected by this Article. Section 2A-104(1)(c) and (2). Of course, Article 2A as state law also is subject to federal consumer protection law.

This definition is modeled after the definition of consumer lease in the Consumer Leasing Act, 15 U.S.C. § 1667 (1982), and in the Unif. Consumer Credit Code § 1.301(14), 7A U.L.A. 43 (1974). However, this definition of consumer lease differs from its models in several respects: the lessor can be a person regularly engaged either in the business of leasing or of selling goods, the lease need not be for a term exceeding four months, a lease primarily for an agricultural purpose is not covered, and whether there should be a limitation by dollar amount and its amount is left up to the individual states.

This definition focuses on the parties as well as the transaction. If a lease is within this definition, the lessor must be regularly engaged in the business of leasing or selling, and the lessee must be an individual not an organization; note that a lease to two or more individuals having a common interest through marriage or the like is not excluded

as a lease to an organization under Section 1-201(28). The lessee must take the interest primarily for a personal, family or household purpose. If required by the enacting state, total payments under the lease contract, excluding payments for options to renew or buy, cannot exceed the figure designated.

(f) "Fault". Section 1-201(16).

(g) "Finance Lease". New. This Article includes a subset of rules that applies only to finance leases. Sections 2A-209, 2A-211(2), 2A-212(1), 2A-213, 2A-219(1), 2A-220(1)(a), 2A-221, 2A-405(c), 2A-407, 2A-516(2) and 2A-517(1)(a) and (2).

For a transaction to qualify as a finance lease it must first qualify as a lease. Section 2A-103(1)(j). Unless the lessor is comfortable that the transaction will qualify as a finance lease, the lease agreement should include provisions giving the lessor the benefits created by the subset of rules applicable to the transaction that qualifies as a finance lease under this Article.

A finance lease is the product of a three-party transaction. The supplier manufactures or supplies the goods pursuant to the lessee's specification, perhaps even pursuant to a purchase order, sales agreement or lease agreement between the supplier and the lessee. After the prospective finance lease is negotiated, a purchase order, sales agreement, or lease agreement is entered into by the lessor (as buyer or prime lessee) or an existing order, agreement or lease is assigned by the lessee to the lessor, and the lessor and the lessee then enter into a lease or sublease of the goods. Due to the limited function usually performed by the lessor, the lessee looks almost entirely to the supplier for representations, covenants and warranties. If a manufacturer's warranty carries through, the lessee may also look to that. Yet, this definition does not restrict the lessor's function solely to the supply of funds; if the lessor undertakes or performs other functions, express warranties, covenants and the common law will protect the lessee.

This definition focuses on the transaction, not the status of the parties; to avoid confusion it is important to note that in other contexts, e.g., tax and accounting, the term finance lease has been used to connote different types of lease transactions, including leases that are disguised secured transactions. M. Rice, Equipment Financing, 62-71 (1981). A lessor who is a merchant with respect to goods of the kind subject to the lease may be a lessor under a finance lease. Many leases that are leases back to the seller of goods (Section 2A-308(3)) will be finance leases. This conclusion is easily demonstrated by a hypothetical. Assume that B had bought goods from C pursuant to a sales contract. After delivery to and acceptance of the goods by B, B negotiates to sell the goods to A and simultaneously to lease the goods back from A, on terms and conditions that, we assume, will qualify the transaction as a lease. Section 2A-103(1)(j). In documenting the sale and lease back, B assigns the original sales contract between B, as buyer, and C, as seller, to A. A review of these facts leads to the conclusion that the lease from A to B qualifies as a finance lease, as all three conditions of the definition are satisfied. Subparagraph (i) is satisfied as A, the lessor, had nothing to do with the selection, manufacture, or supply of the equipment. Subparagraph (ii) is satisfied as A, the lessor, bought the equipment at the same time that A leased the equipment to B, which certainly is in connection with the lease. Finally, subparagraph (iii) (A) is satisfied as A entered into the sales contract with B at the same time that A leased the equipment back to B. B, the lessee, will have received a copy of the sales contract in a timely fashion.

Subsection (i) requires the lessor to remain outside the selection, manufacture and supply of the goods; that is the rationale for releasing the lessor from most of its traditional liability. The lessor is not prohibited from possession, maintenance or operation of the goods, as policy does not require such prohibition. To insure the lessee's reliance on the supplier, and not on the lessor, subsection (ii) requires that the goods (where the lessor is the buyer of the goods) or that the right to possession and use of the goods (where the lessor is the prime lessee and the sublessor of the goods) be acquired in connection with the lease (or sublease) to qualify as a finance lease. The scope of the phrase "in connection with" is to be developed by the courts, case by case. Finally, as the lessee generally relies almost entirely upon the supplier for representations and covenants, and upon the supplier or a manufacturer, or both, for warranties with respect to the goods, subsection (iii) requires that one of the following occur: (A) the lessee receive a copy of the supply contract before signing the lease contract; (B) the lessee's approval of the supply contract is a condition to the effectiveness of the lease contract; (C) the lessee receive a statement describing the promises and warranties and any limitations relevant to the lessee before signing the lease contract; or (D) before signing the lease contract and except in a consumer lease, the lessee receive a writing identifying the supplier (unless the supplier was selected and required by the lessee) and the rights of the lessee under Section 2A-209, and advising the lessee a statement of promises and warranties is available from the supplier. Thus, even where oral supply orders or computer placed supply orders are compelled by custom and usage the transaction may still qualify as a finance lease if the lessee ap-

proves the supply contract before the lease contract is effective and such approval was a condition to the effectiveness of the lease contract. Moreover, where the lessor does not want the lessee to see the entire supply contract, including price information, the lessee may be provided with a separate statement of the terms of the supply contract relevant to the lessee; promises between the supplier and the lessor that do not affect the lessee need not be included. The statement can be a restatement of those terms or a copy of portions of the supply contract with the relevant terms clearly designated. Any implied warranties need not be designated, but a disclaimer or modification of remedy must be designated. A copy of any manufacturer's warranty is sufficient if that is the warranty provided. However, a copy of any Regulation M disclosure given pursuant to 12 C.F.R. § 213.4(g) concerning warranties in itself is not sufficient since those disclosures need only briefly identify express warranties and need not include any disclaimer of warranty.

If a transaction does not qualify as a finance lease, the parties may achieve the same result by agreement; no negative implications are to be drawn if the transaction does not qualify. Further, absent the application of special rules (fraud, duress, and the like), a lease that qualifies as a finance lease and is assigned by the lessor or the lessee to a third party does not lose its status as a finance lease under this Article. Finally, this Article creates no special rule where the lessor is an affiliate of the supplier; whether the transaction qualifies as a finance lease will be determined by the facts of each case.

(h) "Goods". Section 9-102(a)(44). See Section 2A-103(3) for reference to the definition of "Account", "Chattel paper", "Document", "General intangibles" and "Instrument". See Section 2A-217 for determination of the time and manner of identification.

(i) "Installment lease contract". Section 2-612(1).

(j) "Lease". New. There are several reasons to codify the law with respect to leases of goods. An analysis of the case law as it applies to leases of goods suggests at least several significant issues to be resolved by codification. First and foremost is the definition of a lease. It is necessary to define lease to determine whether a transaction creates a lease or a security interest disguised as a lease. If the transaction creates a security interest disguised as a lease, the transaction will be governed by the Article on Secured Transactions (Article 9) and the lessor will be required to file a financing statement or take other action to perfect its interest in the goods against third parties. There is no such requirement with respect to leases under the common law and, except with respect to leases of fixtures (Section 2A-309), this Article imposes no such requirement. Yet the distinction between a lease and a security interest disguised as a lease is not clear from the case law at the time of the promulgation of this Article. DeKoven, *Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision*, 12 U.S.F. L. Rev. 257 (1978).

At common law a lease of personal property is a bailment for hire. While there are several definitions of bailment for hire, all require a thing to be let and a price for the letting. Thus, in modern terms and as provided in this definition, a lease is created when the lessee agrees to furnish consideration for the right to the possession and use of goods over a specified period of time. Mooney, *Personal Property Leasing: A Challenge*, 36 Bus. Law. 1605, 1607 (1981). Further, a lease is neither a sale (Section 2-106(1)) nor a retention or creation of a security interest (Sections 1-201(b)(35) and 1-203). Due to extensive litigation to distinguish true leases from security interests, an amendment to former Section 1-201(37) (now codified as Section 1-203) was promulgated with this Article to create a sharper distinction.

This section as well as Section 1-203 must be examined to determine whether the transaction in question creates a lease or a security interest. The following hypotheticals indicate the perimeters of the issue. Assume that A has purchased a number of copying machines, new, for $1,000 each; the machines have an estimated useful economic life of three years. A advertises that the machines are available to rent for a minimum of one month and that the monthly rental is $100.00. A intends to enter into leases where A provides all maintenance, without charge to the lessee. Further, the lessee will rent the machine, month to month, with no obligation to renew. At the end of the lease term the lessee will be obligated to return the machine to A's place of business. This transaction qualifies as a lease under the first half of the definition, for the transaction includes a transfer by A to a prospective lessee of possession and use of the machine for a stated term, month to month. The machines are goods (Section 2A-103(1)(h)). The lessee is obligated to pay consideration in return, $100.00 for each month of the term.

However, the second half of the definition provides that a sale or a security interest is not a lease. Since there is no passing of title, there is no sale. Sections 2A-103(3) and 2-106(1). Under pre-Act security law this transaction would have created a bailment for hire or a true lease and not a conditional sale. *Da Rocha v. Macomber*, 330 Mass. 611, 614-15, 116 N.E.2d 139, 142 (1953). Under Section 1-203, the same result would follow. While the lessee is obligated to pay rent for the one-

month term of the lease, one of the other four conditions of Section 1-203(b) must be met and none is. The term of the lease is one month and the economic life of the machine is 36 months; thus, Section 1-203(b)(1) is not now satisfied. Considering the amount of the monthly rent, absent economic duress or coercion, the lessee is not bound either to renew the lease for the remaining economic life of the goods or to become the owner. If the lessee did lease the machine for 36 months, the lessee would have paid the lessor $3,600 for a machine that could have been purchased for $1,000; thus, Section 1-203(b)(2) is not satisfied. Finally, there are no options; thus, subparagraphs (3) and (4) of Section 1-203(b) are not satisfied. This transaction creates a lease, not a security interest. However, with each renewal of the lease the facts and circumstances at the time of each renewal must be examined to determine if that conclusion remains accurate, as it is possible that a transaction that first creates a lease, later creates a security interest.

Assume that the facts are changed and that A requires each lessee to lease the goods for 36 months, with no right to terminate. Under pre-Act security law this transaction would have created a conditional sale, and not a bailment for hire or true lease. *Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664, 672-73 (1876). Under this subsection, and Section 1-203, the same result would follow. The lessee's obligation for the term is not subject to termination by the lessee and the term is equal to the economic life of the machine.

Between these extremes there are many transactions that can be created. Some of the transactions were not properly categorized by the courts in applying the 1978 and earlier Official Texts of former Section 1-201(37). This subsection, together with Section 1-203, draws a brighter line, which should create a clearer signal to the professional lessor and lessee.

(k) "Lease agreement". This definition is derived from Section 1-201(b)(3). Because the definition of lease is broad enough to cover future transfers, lease agreement includes an agreement contemplating a current or subsequent transfer. Thus it was not necessary to make an express reference to an agreement for the future lease of goods (Section 2-106(1)). This concept is also incorporated in the definition of lease contract. Note that the definition of lease does not include transactions in ordinary building materials that are incorporated into an improvement on land. Section 2A-309(2).

The provisions of this Article, if applicable, determine whether a lease agreement has legal consequences; otherwise the law of bailments and other applicable law determine the same. Sections 2A-103(4) and 1-103.

(*l*) "Lease contract". This definition is derived from the definition of contract in Section 1-201(11). Note that a lease contract may be for the future lease of goods, since this notion is included in the definition of lease.

(m) "Leasehold interest". New.

(n) "Lessee". New.

(o) "Lessee in ordinary course of business". Section 1-201(b)(9).

(p) "Lessor". New.

(q) "Lessor's residual interest". New.

(r) "Lien". New. This term is used in Section 2A-307 (Priority of Liens Arising by Attachment or Levy on, Security Interests in, and Other Claims to Goods).

(s) "Lot". Section 2-105(5).

(t) "Merchant lessee". New. This term is used in Section 2A-511 (Merchant Lessee's Duties as to Rightfully Rejected Goods). A person may satisfy the requirement of dealing in goods of the kind subject to the lease as lessor, lessee, seller, or buyer.

(u) [Deleted.]

(v) "Purchase". Section 1-201(b)(29). This definition omits the reference to lien contained in the definition of purchase in Article 1 (Section 1-201(b)(29)). This should not be construed to exclude consensual liens from the definition of purchase in this Article; the exclusion was mandated by the scope of the definition of lien in Section 2A-103(1)(r). Further, the definition of purchaser in this Article adds a reference to lease; as purchase is defined in Section 1-201(b)(29) to include any other voluntary transaction creating an interest in property, this addition is not substantive.

(w) "Sublease". New.

(x) "Supplier". New.

(y) "Supply contract". New.

(z) "Termination". Section 2-106(3). The effect of a termination is provided in Section 2A-505(2).

28-12-103. Definitions and index of definitions. [Effective July 1, 2013.] — (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying"

may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming goods or performance under a lease contract" means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars ($25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One (1) of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the

lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309, Idaho Code), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(*l*) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions."	section 28-12-310(1), Idaho Code.
"Construction mortgage."	section 28-12-309(1)(d), Idaho Code.
"Encumbrance."	section 28-12-309(1)(e), Idaho Code.
"Fixtures."	section 28-12-309(1)(a), Idaho Code.
"Fixture filing."	section 28-12-309(1)(b), Idaho Code.
"Purchase money lease."	section 28-12-309(1)(c), Idaho Code.

(3) The following definitions in other chapters apply to this chapter:

"Account."	section 28-9-102(a)(2), Idaho Code.
"Between merchants."	section 28-2-104(3), Idaho Code.
"Buyer."	section 28-2-103(1)(a), Idaho Code.
"Chattel paper."	section 28-9-102(a)(11), Idaho Code.
"Consumer goods."	section 28-9-102(a)(23), Idaho Code.
"Document."	section 28-9-102(a)(30), Idaho Code.
"Entrusting."	section 28-2-403(3), Idaho Code.
"General intangible."	section 28-9-102(a)(42), Idaho Code.
"Good faith."	section 28-1-201(b)(20), Idaho Code.
"Instrument."	section 28-9-102(a)(47), Idaho Code.

"Merchant."	section 28-2-104(1), Idaho Code.
"Mortgage."	section 28-9-102(a)(55), Idaho Code.
"Pursuant to commitment."	section 28-9-102(a)(69), Idaho Code.
"Receipt."	section 28-2-103(1)(c), Idaho Code.
"Sale."	section 28-2-106(1), Idaho Code.
"Sale on approval."	section 28-2-326, Idaho Code.
"Sale or return."	section 28-2-326, Idaho Code.
"Seller."	section 28-2-103(1)(d), Idaho Code.

(4) In addition, chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.
I.C., § 28-12-103, as added by 1993, ch. 287, § 1, p. 977; am. 2001, ch. 208, § 20, p. 704; am. 2004, ch. 42, § 15, p. 77; am. 2004, ch. 43, § 36, p. 136; am. 2012, ch. 145, § 21, p. 381.

Compiler's Notes. For this section as effective until July 1, 2013, see the preceding section, also numbered § 28-12-103.

The 2012 amendment, by ch. 145, updated a reference to section 28-9-102 in subsection (3), in light of the 2012 amendment of that section.

Section 22 of S.L. 2012, ch 145 provided that the act should take effect on and after July 1, 2013.

Part 2. Formation and Construction of Lease Contract

28-12-202. Final written expression — Parol or extrinsic evidence.

Common Law Rule Superseded.
Parties and the trial court incorrectly applied common law parol evidence principles, rather than the provisions of this section, in an action or a contract, such as a motor vehicle lease. Posey v. Ford Motor Credit Co., 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

28-12-207. Course of performance or practical construction. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 28-12-207, as added by 1993, ch. 287, § 1, p. 977, was repealed by S.L. 2004, ch. 43, § 37.

28-12-208. Modification, rescission and waiver.

Common Law Rule Superseded.
Common law rule requiring consideration for contract modification, like the common law parol evidence rule, was superseded by the Uniform Commercial Code, and this section provides that an agreement modifying a lease contract needs no consideration to be binding. Posey v. Ford Motor Credit Co., 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

Part 3. Effect of Lease Contract

28-12-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. — (1) Except as otherwise provided in section 28-12-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in sections 28-12-306 and 28-12-308, a creditor of a lessor takes subject to the

lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in sections 28-9-317, 28-9-321 and 28-9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

History.
I.C., § 28-12-307, as added by 1993, ch. 287, § 1, p. 977; am. 2001, ch. 208, § 22, p. 704.

Compiler's Notes. This section is set out above to correct a punctuation error appearing at the end of subsection (2) in the bound volume.

Part 5. Default

28-12-501. Default — Procedure. — (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with the provisions of this chapter.

(4) Except as otherwise provided in section 28-1-305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

History.
I.C., § 28-12-501, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 43, § 38, p. 136.

Compiler's Notes. Section 37 of S.L. 2004, ch. 43 contains a repeal and section 39 of S.L. 2004, ch. 43 is compiled as § 28-12-518.

OFFICIAL COMMENT

Uniform Statutory Source: Former Section 9-501 (now codified as Section 9-601).
Changes: Substantially revised.
Purposes:

1. Subsection (1) is new and represents a departure from the Article on Secured Transactions (Article 9) as the subsection makes clear that whether a party to the lease agreement is in default is determined by this Article as well as the agreement. Sections 2A-508 and 2A-523. It further departs from Article 9 in recognizing the potential default of either party, a function of the bilateral nature of the obligations between the parties to the lease contract.

2. Subsection (2) is a version of the first sentence of Section 9-601(a), revised to reflect leasing terminology.

3. Subsection (3), an expansive version of the second sentence of Section 9-601(a), lists the procedures that may be followed by the party seeking enforcement; in effect, the scope of the procedures listed in subsection (3) is consistent with the scope of the procedures available to the foreclosing secured party.

4. Subsection (4) establishes that the par-

ties' rights and remedies are cumulative. DeKoven, Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision, 12 U. San. Fran. L. Rev. 257, 276-80 (1978). Cumulation, and largely unrestricted selection, of remedies is allowed in furtherance of the general policy of the Commercial Code, stated in Section 1-305, that remedies be liberally administered to put the aggrieved party in as good a position as if the other party had fully performed. Therefore, cumulation of, or selection among, remedies is available to the extent necessary to put the aggrieved party in as good a position as it would have been in had there been full performance. However, cumulation of, or selection among, remedies is not available to the extent that the cumulation or selection would put the aggrieved party in a better position than it would have been in had there been full performance by the other party.

5. Section 9-602, which, among other things, states that certain rules, to the extent they give rights to the debtor and impose duties on the secured party, may not be waived or varied, is not incorporated in this Article. Given the significance of freedom of contract in the development of the common law as it applies to bailments for hire and the lessee's lack of an equity of redemption, there is no reason to impose that restraint.

Cross References:

Sections 1-305, 2A-508, 2A-523, Article 9, especially Sections 9-601 and 9-602.

Definitional Cross References:

"Goods". Section 2A-103(1)(h).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section 1-201(b)(26).
"Remedy". Section 1-201(b)(32).
"Rights". Section 1-201(b)(34).

28-12-514. Waiver of lessee's objections. — (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 28-12-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

History.

I.C., § 28-12-514, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 42, § 16, p. 77.

Compiler's Notes. Sections 15 and 17 of S.L. 2004, ch. 42 are compiled as §§ 28-12-103 and 28-12-526, respectively.

28-12-518. Cover — Substitute goods. — (1) After a default by a lessor under the lease contract of the type described in section 28-12-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-302 and 28-12-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present

value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 28-12-519 governs.

History.
I.C., § 28-12-518, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 43, § 39, p. 136.

Compiler's Notes. Section 38 of S.L. 2004, ch. 43 is compiled as § 28-12-501.

OFFICIAL COMMENT

Uniform Statutory Source: Section 2-712.

Changes: Substantially revised.

Purposes:

1. Subsection (1) allows the lessee to take action to fix its damages after default by the lessor. Such action may consist of the lease of goods. The decision to cover is a function of commercial judgment, not a statutory mandate replete with sanctions for failure to comply. Cf. Section 9-625.

2. Subsection (2) states a rule for determining the amount of lessee's damages provided that there is no agreement to the contrary. The lessee's damages will be established using the new lease agreement as a measure if the following three criteria are met: (i) the lessee's cover is by lease agreement, (ii) the lease agreement is substantially similar to the original lease agreement, and (iii) such cover was effected in good faith, and in a commercially reasonable manner. Thus, the lessee will be entitled to recover from the lessor the present value, as of the date of commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period which is comparable to the then remaining term of the original lease agreement less the present value of the rent reserved for the remaining term under the original lease, together with incidental or consequential damages less expenses saved in consequence of the lessor's default. Consequential damages may include loss suffered by the lessee because of deprivation of the use of the goods during the period between the default and the acquisition of the goods under the new lease agreement. If the lessee's cover does not satisfy the the criteria of subsection (2), Section 2A-519 governs.

3. Two of the three criteria to be met by the lessee are familiar, but the concept of the new lease agreement being substantially similar to the original lease agreement is not. Given the many variables facing a party who intends to lease goods and the rapidity of change in the market place, the policy decision was made not to draft with specificity. It was thought unwise to seek to establish certainty at the cost of fairness. Thus, the decision of whether the new lease agreement is substantially similar to the original will be determined case by case.

4. While the section does not draw a bright line, it is possible to describe some of the factors that should be considered in finding that a new lease agreement is substantially similar to the original. First, the goods subject to the new lease agreement should be examined. For example, in a lease of computer equipment the new lease might be for more modern equipment. However, it may be that at the time of the lessor's breach it was not possible to obtain the same type of goods in the market place. Because the lessee's remedy under Section 2A-519 is intended to place the lessee in essentially the same position as if he had covered, if goods similar to those to have been delivered under the original lease are not available, then the computer equipment in this hypothetical should qualify as a commercially reasonable substitute. See Section 2-712(1).

5. Second, the various elements of the new lease agreement should also be examined. Those elements include the presence or absence of options to purchase or release; the lessor's representations, warranties and covenants to the lessee, as well as those to be provided by the lessee to the lessor; and the services, if any, to be provided by the lessor or by the lessee. All of these factors allocate cost and risk between the lessor and the lessee and thus affect the amount of rent to be paid. If the differences between the original lease and the new lease can be easily valued, it would be appropriate for a court to adjust the difference in rental to take account of the difference between the two leases, find that the new lease is substantially similar to the old lease, and award cover damages under this section. If, for example, the new lease

requires the lessor to insure the goods in the hands of the lessee, while the original lease required the lessee to insure, the usual cost of such insurance could be deducted from the rent due under the new lease before determining the difference in rental between the two leases.

6. Having examined the goods and the agreement, the test to be applied is whether, in light of these comparisons, the new lease agreement is substantially similar to the original lease agreement. These findings should not be made with scientific precision, as they are a function of economics, nor should they be made independently with respect to the goods and each element of the agreement, as it is important that a sense of commercial judgment pervade the finding. To establish the new lease as a proper measure of damage under subsection (2), these factors, taken as a whole, must result in a finding that the new lease agreement is substantially similar to the original.

7. A new lease can be substantially similar to the original lease even though its term extends beyond the remaining term of the original lease, so long as both (a) the lease terms are commercially comparable (e.g., it is highly unlikely that a one-month rental and a five-year lease would reflect similar commercial realities), and (b) the court can fairly apportion a part of the rental payments under the new lease to that part of the term of the new lease which is comparable to the remaining lease term under the original lease. Also, the lease term of the new lease may be comparable to the term of the original lease even though the beginning and ending dates of the two leases are not the same. For example, a two-month lease of agricultural equipment for the months of August and September may be comparable to a two-month lease running from the 15th of August to the 15th of October if in the particular location two-month leases beginning on August 15th are basically interchangeable with two-month leases beginning August 1st. Similarly, the term of a one-year truck lease beginning on the 15th of January may be comparable to the term of a one-year truck lease beginning January 2d. If the lease terms are found to be comparable, the court may base cover damages on the entire difference between the costs under the two leases.

Cross References:

Sections 2-712(1), 2A-519 and 9-625.

Definitional Cross References:

"Agreement". Section 1-201(b)(3).
"Contract". Section 1-201(b)(12).
"Good faith". Section 1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section 1-201(b)(26).
"Present value". Section 2A-103(b)(28).
"Purchase". Section 2A-103(1)(v).

28-12-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. — (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-302 and 28-12-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 28-12-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 28-12-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any

manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

History.
I.C., § 28-12-519, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 43, § 40, p. 136.

Compiler's Notes. Section 41 of S.L. 2004, ch. 43 is compiled as § 28-12-527.

OFFICIAL COMMENT

Uniform Statutory Source: Sections 2-713 and 2-714.

Changes: Substantially revised.

Purposes:

1. Subsection (1), a revised version of the provisions of Section 2-713(1), states the basic rule governing the measure of lessee's damages for non-delivery or repudiation by the lessor or for rightful rejection or revocation of acceptance by the lessee. This measure will apply, absent agreement to the contrary, if the lessee does not cover or if the cover does not qualify under Section 2A-518. There is no sanction for cover that does not qualify.

2. The measure of damage is the present value, as of the date of default, of the market rent for the remaining term of the lease less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved in consequence of the default. Note that the reference in Section 2A-519(1) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this Article and the lease agreement. American Bar Foundation, Commentaries on Indentures, § 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended or cured. Sections 2A-103(4) and 1-103.

3. Subsection (2), a revised version of the provisions of Section 2-713(2), states the rule with respect to determining market rent.

4. Subsection (3), a revised version of the provisions of Section 2-714(1) and (3), states the measure of damages where goods have been accepted and acceptance is not revoked. The subsection applies both to defaults which occur at the inception of the lease and to defaults which occur subsequently, such as failure to comply with an obligation to maintain the leased goods. The measure in essence is the loss, in the ordinary course of events, flowing from the default.

5. Subsection (4), a revised version of the provisions of Section 2-714(2), states the measure of damages for breach of warranty. The measure in essence is the present value of the difference between the value of the goods accepted and of the goods if they had been as warranted.

6. Subsections (1), (3) and (4) specifically state that the parties may by contract vary the damages rules stated in those subsections.

Cross References:
Sections 2-713(1), 2-713(2), 2-714 and Section 2A-518.

Definitional Cross References:
"Conforming". Section 2A-103(1)(d).
"Delivery". Section 1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notification". Section 1-202.
"Present value". Section 1-201(b)(28).
"Value". Section 1-204.

28-12-526. Lessor's stoppage of delivery in transit or otherwise. — (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or

freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under the provisions of subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History.
I.C., § 28-12-526, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 42, § 17, p. 77.

Compiler's Notes. Sections 16 and 18 of S.L. 2004, ch. 42 are compiled as §§ 28-12-514 and 28-4-104, respectively.

28-12-527. Lessor's rights to dispose of goods. — (1) After a default by a lessee under the lease contract of the type described in section 28-12-523(1) or 28-12-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 28-12-525 or 28-12-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-302 and 28-12-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 28-12-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in

good faith for value as a result of a disposition under the provisions of this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 28-12-508(5)).

History.
I.C., § 28-12-527, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 43, § 41, p. 136.

Compiler's Notes. Section 40 of S.L. 2004, ch. 43 is compiled as § 28-12-519.

OFFICIAL COMMENT

Uniform Statutory Source: Section 2-706(1), (5) and (6).

Changes: Substantially revised.

Purposes:

1. Subsection (1), a revised version of the first sentence of subsection 2-706(1), allows the lessor the right to dispose of goods after a statutory or other material default by the lessee (even if the goods remain in the lessee's possession — Section 2A-525(2)), after the lessor refuses to deliver or takes possession of the goods, or, if agreed, after other contractual default. The lessor's decision to exercise this right is a function of a commercial judgment, not a statutory mandate replete with sanctions for failure to comply. Cf. Section 9-625. As the owner of the goods, in the case of a lessor, or as the prime lessee of the goods, in the case of a sublessor, compulsory disposition of the goods is inconsistent with the nature of the interest held by the lessor or the sublessor and is not necessary because the interest held by the lessee or the sublessee is not protected by a right of redemption under the common law or this Article. Subsection 2A-527(5).

2. The rule for determining the measure of damages recoverable by the lessor against the lessee is a function of several variables. If the lessor has elected to effect disposition under subsection (1) and such disposition is by lease that qualifies under subsection (2), the measure of damages set forth in subsection (2) will apply, absent agreement to the contrary. Sections 2A-504, 2A-103(4) and 1-302.

3. The lessor's damages will be established using the new lease agreement as a measure if the following three criteria are satisfied: (i) the lessor disposed of the goods by lease, (ii) the lease agreement is substantially similar to the original lease agreement, and (iii) such disposition was in good faith, and in a commercially reasonable manner. Thus, the lessor will be entitled to recover from the lessee the accrued and unpaid rent as of the date of commencement of the term of the new lease, and the present value, as of the same date of the rent under the original lease for the then remaining term less the present value as of the same date of the rent under the new lease agreement applicable to the period of the new lease comparable to the remaining term under the original lease, together with incidental damages less expenses saved in consequence of the lessee's default. If the lessor's disposition does not satisfy the criteria of subsection (2), the lessor may calculate its claim against the lessee pursuant to Section 2A-528. Section 2A-523(1)(e).

4. Two of the three criteria to be met by the lessor are familiar, but the concept of the new lease agreement that is substantially similar to the original lease agreement is not. Given the many variables facing a party who intends to lease goods and the rapidity of change in the market place, the policy decision was made not to draft with specificity. It was thought unwise to seek to establish certainty at the cost of fairness. The decision of whether the new lease agreement is substantially similar to the original will be determined case by case.

5. While the section does not draw a bright line, it is possible to describe some of the factors that should be considered in a finding that a new lease agreement is substantially similar to the original. The various elements of the new lease agreement should be examined. Those elements include the options to purchase or release; the lessor's representations, warranties and covenants to the lessee as well as those to be provided by the lessee to the lessor; and the services, if any, to be provided by the lessor or by the lessee. All of these factors allocate cost and risk between the lessor and the lessee and thus affect the amount of rent to be paid. These findings should not be made with scientific precision, as they are a function of economics, nor

should they be made independently, as it is important that a sense of commercial judgment pervade the finding. See Section 2A-507(2). To establish the new lease as a proper measure of damage under subsection (2), these various factors, taken as a whole, must result in a finding that the new lease agreement is substantially similar to the original. If the differences between the original lease and the new lease can be easily valued, it would be appropriate for a court to find that the new lease is substantially similar to the old lease, adjust the difference in the rent between the two leases to take account of the differences, and award damages under this section. If, for example, the new lease requires the lessor to insure the goods in the hands of the lessee, while the original lease required the lessee to insure, the usual cost of such insurance could be deducted from rent due under the new lease before the difference in rental between the two leases is determined.

6. The following hypothetical illustrates the difficulty of providing a bright line. Assume that A buys a jumbo tractor for $1 million and then leases the tractor to B for a term of 36 months. The tractor is delivered to and is accepted by B on May 1. On June 1 B fails to pay the monthly rent to A. B returns the tractor to A, who immediately releases the tractor to C for a term identical to the term remaining under the lease between A and B. All terms and conditions under the lease between A and C are identical to those under the original lease between A and B, except that C does not provide any property damage or other insurance coverage, and B agreed to provide complete coverage. Coverage is expensive and difficult to obtain. It is a question of fact whether it is so difficult to adjust the recovery to take account of the difference between the two leases as to insurance that the second lease is not substantially similar to the original.

7. A new lease can be substantially similar to the original lease even though its term extends beyond the remaining term of the original lease, so long as both (a) the lease terms are commercially comparable (e.g., it is highly unlikely that a one-month rental and a five-year lease would reflect similar realities), and (b) the court can fairly apportion a part of the rental payments under the new lease to that part of the term of the new lease which is comparable to the remaining lease term under the original lease. Also, the lease term of the new lease may be comparable to the remaining term of the original lease even though the beginning and ending dates of the two leases are not the same. For example, a two-month lease of agricultural equipment for the months of August and September may be comparable to a two-month lease running from the 15th of August to the 15th of October if in the particular location two-month leases beginning on August 15th are basically interchangeable with two-month leases beginning August 1st. Similarly, the term of a one-year truck lease beginning on the 15th of January may be comparable to the term of a one-year truck lease beginning January 2nd. If the lease terms are found to be comparable, the court may base cover damages on the entire difference between the costs under the two leases.

8. Subsection (3), which is new, provides that if the lessor's disposition is by lease that does not qualify under subsection (2), or is by sale or otherwise, Section 2A-528 governs.

9. Subsection (4), a revised version of subsection 2-706(5), applies to protect a subsequent buyer or lessee who buys or leases from the lessor in good faith and for value, pursuant to disposition under this section. Note that by its terms, the rule in subsection 2A-304(1), which provides that the subsequent lessee takes subject to the original lease contract, is controlled by the rule stated in this subsection.

10. Subsection (5), a revised version of subsection 2-706(6), provides that the lessor is not accountable to the lessee for any profit made by the lessor on a disposition. This rule follows from the fundamental premise of the bailment for hire that the lessee under a lease of good has no equity of redemption to protect.

Cross References:

Sections 1-302, 2-706(1), 2-706(5), 2-706(6), 2A-103(4), 2A-304(1), 2A-504, 2A-507(2), 2A-523(1)(e), 2A-525(2), 2A-517(5), 2A-528 and 9-625.

Definitional Cross References:

"Buyer" and "Buying". Section 2-103(1)(a).
"Delivery". Section 1-201(b)(15).
"Good faith". Section 1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Present value". Section 1-201(b)(28).
"Rights". Section 1-201(b)(34).
"Sale". Section 2-106(1).
"Security interest". Section 1-201(b)(35) and 1-203.
"Value". Section 1-204.

28-12-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. — (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or

otherwise determined pursuant to agreement of the parties (sections 28-1-302 and 28-12-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 28-12-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 28-12-523(1) or 28-12-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection, of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 28-12-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

History.
I.C., § 28-12-528, as added by 1993, ch. 287, § 1, p. 977; am. 2004, ch. 43, § 42, p. 136.

Compiler's Notes. Section 43 of S.L. 2004, ch. 43 is compiled as § 28-50-103.

OFFICIAL COMMENT

Uniform Statutory Source: Section 2-708.

Changes: Substantially revised.

Purposes:

1. Subsection (1), a substantially revised version of Section 2-708(1), states the basic rule governing the measure of lessor's damages for a default described in Section 2A-523(1) or (3)(a), and, if agreed, for a contractual default. This measure will apply if the lessor elects to retain the goods (whether undelivered, returned by the lessee, or repossessed by the lessor after acceptance and default by the lessee) or if the lessor's disposition does not qualify under subsection 2A-527(2). Section 2A-527(3). Note that under some of these conditions, the lessor may recover damages from the lessee pursuant to the rule set forth in Section 2A-529. There is no sanction for disposition that does not qualify under subsection 2A-527(2). Application of the rule set forth in this section is subject to agreement to the contrary. Sections 2A-504, 2A-103(4) and 1-302.

2. If the lessee has never taken possession of the goods, the measure of damage is the accrued and unpaid rent as of the date of default together with the present value, as of the date of default, of the original rent for the remaining term of the lease less the present value as of the same date of market rent, and incidental damages, less expenses saved in consequence of the default. Note that the reference in Section 2A-528(1)(i) and (ii) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this Article and the lease agreement. American Bar Foundation, Commentaries on Indentures, § 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended or cured. Sections 2A-103(4) and 1-103. If the lessee has taken possession of the goods, the measure of damages is the accrued and unpaid rent as of the earlier of the time the lessor repossesses the

goods or the time the lessee tenders the goods to the lessor plus the difference between the present value, as of the same time, of the rent under the lease for the remaining lease term and the present value, as of the same time, of the market rent.

3. Market rent will be computed pursuant to Section 2A-507.

4. Subsection (2), a somewhat revised version of the provisions of subsection 2-708(2), states a measure of damages which applies if the measure of damages in subsection (1) is inadequate to put the lessor in as good a position as performance would have. The measure of damage is the lessor's profit, including overhead, together with incidental damages, with allowance for costs reasonably incurred and credit for payments or proceeds of disposition. In determining the amount of due credit with respect to proceeds of disposition a proper value should be attributed to the lessor's residual interest in the goods. Sections 2A-103(1)(q) and 2A-507(4).

5. In calculating profit, a court should include any expected appreciation of the goods, e.g. the foal of a leased brood mare. Because this subsection is intended to give the lessor the benefit of the bargain, a court should consider any reasonable benefit or profit expected by the lessor from the performance of the lease agreement. See Honeywell, Inc. v. Lithonia Lighting, Inc., 317 F. Supp. 406, 413 (N.D. Ga. 1970); Locks v. Wade, 36 N.J. Super. 128, 131, 114 A.2d 875, 877 (Super. Ct. App. Div. 1955). Further, in calculating profit the concept of present value must be given effect. Taylor v. Commercial Credit Equip. Corp., 170 Ga. App. 322, 316 S.E.2d 788 (Ct. App. 1984). See generally Section 2A-103(1)(u).

Cross References:

Sections 1-302, 2-708, 2A-103(1)(u), 2A-402, 2A-504, 2A-507, 2A-527(2) and 2A-529.

Definitional Cross References:

"Agreement". Section 1-201(3).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section 1-201(b)(26).
"Present value". Section 1-201(b)(28).
"Sale". Section 2-106(1).